TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 393

THE UNITED STATES OF AMERICA AT THE RELATION OF THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, [redacted] ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 27, 1927

(28,750)

(29,708)

SUPREME COURT OF THE UNITED STATES

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No. 398

THE UNITED STATES OF AMERICA AT THE RELATION OF THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, CHARLES F. STAPLES, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia.

No. 3962.

UNITED STATES OF AMERICA at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY CO., Appellant,

vs.

INTERSTATE COMMERCE COMMISSION ET AL.

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a Supreme Court of the District of Columbia.

At Law.

No. 67096.

UNITED STATES OF AMERICA at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Relator,

against

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, Charles F. Staples, Charles W. Needham, Howard M. Jones, Theodore P. Artaud, and Andrew Wiley, Respondents.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

b Filed October 25, 1922.

In the Supreme Court of the District of Columbia.

67096.

UNITED STATES OF AMERICA at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Relator,

against

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, Charles F. Staples, Charles W. Needham, Howard M. Jones, Theodore P. Artaud, Andrew Wiley, Respondents.

Petition for Writ of Mandamus.

1 In the Supreme Court of the District of Columbia.

67096.

UNITED STATES OF AMERICA at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Relator,

against

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, Charles F. Staples, Charles W. Needham, Howard M. Jones, Theodore P. Artaud, Andrew Wiley, Respondents.

Petition for Writ of Mandamus.

To the Supreme Court of the District of Columbia:

Comes now the St. Louis-Southwestern Railway Company, and respectfully shows to the Court:

That it is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, is a citizen and
2 resident of the Eastern District of Missouri, and is a common carrier engaged in the transportation of persons and property by steam railroad between places in various states of the United States, and is subject to the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce," and acts supplemental thereto and amendatory thereof, and particularly of the act of March 1, 1913 (39 U. S. Statutes at Large, p. 701), Section 19*a* of the aforesaid Act to Regulate Commerce and commonly known as the Valuation Act.

That respondent, Interstate Commerce Commission, is the Commission created by the act last mentioned and charged with certain duties therein imposed; respondent George B. McGinty is secretary of said Commission, and respondents Charles F. Staples, Charles W. Needham, Howard M. Jones and Theodore P. Artaud are citizens and

residents of the District of Columbia, and are the acting director, the solicitor, the supervising engineer and supervisor of land appraisals, respectively, of the Bureau of Valuation, a bureau made and constituted by the respondent, Interstate Commerce Commission, charged with the performance of the duties imposed upon said Commission by said section 19*a* of said act, and have under their immediate control certain records, documents and data hereinafter described.

That in performance of the duties imposed upon it by the section last mentioned, the respondent, Interstate Commerce Commission, began an investigation to ascertain the value of the property of the relator, and on or about July 15, 1921, made public and served upon the relator a certain tentative valuation, which, among other
3 things, purported to show the "final" value of all property owned or used by relator, subject to the provisions of said act, which was based upon certain other findings required by law to be made by said Commission, to wit: The "original cost to date" of relator's said property, the "cost of reproduction new" thereof, the "cost of reproduction less depreciation" thereof, together with the "original cost" of relator's land, rights of way and terminals, the "present value" of the same, and the "present cost of condemnation and damage or of purchase in excess of such present value." In compliance with the requirements of said act, the said tentative valuation set out a statement of the kinds of proof and the methods used in making said findings, by reference to the Appendix 3 of the Report in Texas Midland Railroad Valuation Docket 1, Valuation Reports 1, 108, and Appendix to the supplemental tentative valuation in Valuation Docket 4, the Kansas City Southern Railway Company et al., under date of March 31, 1921, making same a part of said tentative valuation.

A copy of said tentative valuation and report is hereto attached and made a part hereof as Exhibit 1, and the aforesaid Appendix 3 of the Report upon the Texas Midland Railroad, and Appendix "A" to the Supplemental Tentative Valuation of the Kansas City Southern Railway Company, made a part of the said tentative valuation and reports as aforesaid, are hereto attached and made a part hereof as Exhibits 2 and 3, respectively.

That within the time and in the manner and form required by law, relator filed its protest against said tentative valuation,
4 in which it excepted to and protested against the following findings, among other things therein contained: The finding by the Commission of the "final value" of its property, the "cost of reproduction new" thereof, the "cost of reproduction less depreciation," "present value" of its lands, and the "present cost of condemnation and damage or purchase in excess of such present value" of its lands.

That in said Exhibits 2 and 3, the respondent Commission describes the evidence upon which it based its tentative findings. It is stated that the opinions of the experts as to costs, values, life, etc., were rejected as untrustworthy, and that the findings contained in

said tentative valuation were based upon certain underlying data gathered and compiled by the officers and employees of the Bureau of Valuation, consisting among other things of the following:

(1) A record of purchases of materials made by carriers over the country as a whole, during the ten years ending June 30, 1914; copies of contracts for constructing railroads or parts of railroads by all carriers in the country during said decade; copies of the construction record of unnamed carriers showing the actual expenditures for various classes of construction work by railroads in certain unnamed construction projects selected by the officers of the Bureau of Valuation; copies of invoices and vouchers and books of carriers, manufacturers, dealers and jobbers over the country as a whole, of materials and supplies used in construction work by carriers during such decade; undisclosed records of carriers, dealers, manufacturers and Federal and State Governmental departments, and pri-
5 vate records purporting to show the service life of various classes of materials and units of property constituting the railroad, together with a filed inspection report made in writing by engineers of the Bureau of Valuation showing the age of such materials and units of property in relator's railroad. These data were classified and from them certain data selected and from these classified, selected data, the officers of the Bureau of Valuation made certain compilations and analyses which purport to show the "average cost" of (*a*) the various materials used in construction work, (*b*) transporting such materials to the place of installation, (*c*) storing and handling it preparatory to installation, and (*d*) installation proper; the "average ratios" which "engineering expenses during construction," "general expenses during construction," and "interest during construction" bore to the cost of construction in projects selected and classified by said Bureau of Valuation, the average service life, age, etc., of the various units of property in relator's railroad. These compilations of data, the report states, were used by the Bureau of Valuation as the basis for findings of the "cost of reproduction new" and the "cost of reproduction less depreciation" of relator's property.

(2) Field notes made by certain unnamed land appraisers, strangers to the communities, after an inspection of the lands, purporting to show (*a*) the classification of lands, rights of way and terminals owned by relator between carrier and non-carrier lands, and the reasons therefor; (*b*) zones wherein relator's lands were of substantially similar character and value; (*c*) sales (showing
6 seller, buyer, price and terms) of similar lands in the immediate vicinity of relator's lands; (*d*) the assessed value of such similar lands, with the ratio of such assessed value to actual value; (*e*) names and addresses of residents in the vicinity with the appraisers' statement of their opinion of the value of lands in the vicinity of relator's lands, and finally (*f*) the land appraiser's opinion of the unit value of relator's lands based upon the foregoing, upon which data was based the "present value" of relator's lands.

(3) Copies of records of the carriers over the country as a whole,

showing the difference between the amount paid by carriers for the acquisition of lands for rights of way, terminals, etc., and the market value of such lands, which data the employees of the Bureau of Valuation classified, and after such classification, selected therefrom certain data, from which classified, selected data they determined certain ratios to be applied to a so-called "present value" of relator's lands, from which was made the finding "the present cost of condemnation and damage or of purchase in excess of the present value of relator's lands."

That all of the foregoing underlying data were reduced to writing, recorded and compiled by officers and agents of the respondent, Interstate Commerce Commission, and under the control and direction of the other respondents named herein as officers of its bureau of valuation, in the pursuance of the duty imposed upon the said respondent, Interstate Commerce Commission, by the aforesaid act of Congress requiring it to ascertain and report the tentative valuation of relator's property. All of such underlying data so compiled by such public officers was delivered to the respondent Interstate Commerce Commission, and was filed with and is now within the possession and control of said Commission as a part of its records and archives.

That the aforesaid tentative valuation and the appendices thereto do not go further than describe the nature of the said underlying data, and that said tentative valuation and the appendices do not disclose, and the respondent, Interstate Commerce Commission, has not disclosed to relator in any manner the names, addresses or qualifications of its subordinate officers, agents, employes, engineers, accountants and land appraisers who collected the aforesaid information and made compilations and analyses thereof, and who, in fact, reached the conclusion adopted in said tentative valuation and the appendices, nor the names or addresses of any of the carriers, contractors, dealers, manufacturers, jobbers, Federal or state governmental departments from whom it is alleged in said appendix that certain records of the contracts, invoices, vouchers and reports were obtained, showing or purporting to show the cost of work or labor involved in railroad construction during said decade, and the service life of the various classes of materials and units of property constituting relator's railroad; nor the data contained in the aforesaid records of the contracts, invoices, vouchers, etc., purporting to show such information; nor the names of the land appraisers who made an inspection of its lands, the facts or reasons which guided said appraisers in the classification of relator's lands or of zoning the same, nor of the sales or assessed value of similar lands, nor of the names and addresses of residents in the vicinity who were interviewed, nor of the opinion which said residents gave such appraisers as to the value of relator's lands.

That relator is informed, believes and charges that much of the said underlying data has never been verified by the respondent, Interstate Commerce Commission, or any of its officers and employes, or any other person whatsoever; that no investigation has been made to ascertain whether or not such information as de-

scribed in said report was, in fact, given by said unknown persons, or whether or not the persons alleged to have given it were qualified by experience or knowledge to furnish same, or whether or not the information as furnished was correctly recorded, transcribed or copied, or whether or not the same was correctly analyzed and compiled.

That relator further is informed, believes and charges that in many cases the alleged opinions and statements of records, invoices and vouchers were given orally and not reduced to writing by the persons responsible therefor; that in very few cases were the same verified by oath, and that in many cases the information obtained from such unknown third persons was in the form of offhand and haphazard opinions and statements of fact made without sufficient consideration or knowledge, and made, in many cases, by men without experiential qualifications to make the same, and that in some cases opinions and facts were recorded which in fact did not exist.

Relator can test the soundness or correctness of said tentative findings above set out (which findings are by the act made prima facie true), based upon evidence consisting of aforesaid underlying data collected from many and various sources and selected from other data which may or may not be relevant only by examining, testing and verifying the said underlying data, the sources from which obtained, the data rejected or omitted therefrom, the fairness, justness or relevancy of its classification and selection, and the accuracy and fairness of the compilations thereof.

That the aforesaid underlying data is voluminous and comprises several thousand pages of records and papers; and that in order to properly analyze the said information, as well as to investigate the accuracy and veracity of the same from the many sources from which collected, many days will be required; and that it would be impossible for relator to examine said data and investigate the accuracy and veracity thereof after a hearing upon such tentative valuation has begun.

Relator has, from time to time, demanded access to the aforesaid underlying data for the purpose of so testing and verifying them, which demand the said respondent, Interstate Commerce Commission, has denied.

That said underlying data are public records, collected and compiled at public expense by officers and agents of the United States in performance of their official duties imposed by law upon them, are material to the issues pending in said valuation proceeding, contain competent, material and necessary evidence in support of its said protests, and relator avers that an inspection and examination of such underlying data prior to a hearing upon said protest will enable it to show at said hearing that the aforesaid tentative valuations are wholly erroneous and without basis in law or in fact, and that the same should be set aside and held for naught.

That under the Act of Congress respondent, Interstate Commerce Commission, is required to fix a time for hearing its protest filed against the aforesaid tentative valuation, and to hear and consider

any matter relative and material thereto which may be presented in support of said protest, and that it is also required under said act to subpœna witnesses to attend said hearing, with such documents as may be specified, when demand is made therefor by relator.

That respondents Howard M. Jones, Theodore P. Artaud, Andrew Wiley, Charles T. Staples, and Charles W. Needham are witnesses residing and living in the City of Washington, within the jurisdiction of said Commission and this Court, whose testimony is relevant and material to relator's protest and who have in their possession the aforesaid underlying data, which data is relevant and material evidence in behalf of relator's protest.

That on July 18, 1922, the respondent Commission entered an order in said valuation, setting the same down for hearing at Washington, D. C., on September 26, 1922.

That on the 20th day of July, 1922, it filed a motion with the said Interstate Commerce Commission, wherein it prayed that the Commission make and enter an order permitting it to examine the aforesaid underlying data and to make copies, written and photographic, of the same, and also that the Commission issue a subpœna duces tecum to the following named officers and employes of the
11 Bureau of Valuation, commanding them to appear and give testimony at the aforesaid hearing to be held at Washington, D. C., upon the protests of relator against the aforesaid tentative valuation, on September 26, 1922, and commanding the said officers and employes, to wit, Howard M. Jones, Thomas P. Artaud, Andrew Wiley, Charles F. Staples, and Charles W. Needham, to bring with them all of the above-described underlying data, reports, compilations, records and memoranda, and all other data and compilations in any way relating to the matter in issue. A copy of said motion is hereto attached and made a part hereof as Exhibit 4.

That thereafter, on August 1, 1922, respondent Commission canceled the said hearing.

Thereafter, on the 9th day of October, 1922, respondent Interstate Commerce Commission made and entered an order denying the said motion and sealing the said underlying data against all persons whatsoever, except employes of the Commission, which order was in words and figures as follows:

"Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of October, A D. 1922.

In the matter of the request of carriers for permission to inspect records and data of the Bureau of Valuation.

Whereas, The Commission has before it the request of certain carriers to be permitted to examine and make copies, written and photographic, of the original field notes, cost data, copies of contracts,
12 records of construction costs, opinions, sales, assessments and other data, reports, records and compilations of the land, accounting and engineering sections of the Bureau of Valuation, and the Commission having considered fully the representations

of the carriers relative thereto, the brief submitted in support thereof, the character of the records and data in question, and the necessities of the Commission's valuation work;

It appearing, That the opening of certain records and data of the Bureau of Valuation to inspection and examination by other than employes of the Commission unless and until they shall have been offered in evidence in hearings before the Commission upon protests against the tentative valuations of carriers' properties, or before a court of competent jurisdiction, would be detrimental to the public interest; would make it impossible for the Commission to secure as reliable and uninfluenced opinions as to land values and price and cost information as it can otherwise secure; would unnecessarily prolong the work, and greatly increase the expense thereof; and would seriously interfere with due performance of the regular duties of the Commission's employes;

It is ordered, That, until the further order of the Commission, office or field notations and memoranda in the Bureau of Valuation, and opinions or correspondence from or to any branch or employe thereof; land field notes; land computation sheets; cost information secured from manufacturers, dealers, contractors, private parties or carriers other than the carrie-s making the application for permission to inspect; cost studies and cost analyses prepared by the employes of the Bureau of Valuation, shall not be open for inspection by other than employes of the Commission unless and until
13 offered in evidence either in a valuation hearing under the provisions of Section 19-*a* of the Interstate Commerce Act or in a court of competent jurisdiction.

By the Commission.

[SEAL.] GEORGE B. McGINTY,
Secretary."

That said order is unlawful and void (1) because said Commission is not authorized by law to seal said data against relator as a litigant, and (2) because the reasons given in the same for so sealing said underlying data against the public are palpably insufficient in law to warrant said action; that so far from making it impossible for the Commission to secure reliable and uninfluenced opinions as to land values and prices and cost information, a public proceeding wherein both parties have the opportunity to confront, examine and cross-examine witnesses, both as to facts claimed to be within their knowledge, and as to the basis of opinions, given, as well as their experiental qualifications to give such opinions, will tend far more to disclose reliable and trustworthy evidence than will a proceeding in camera, wherein the finding is based upon unknown, unverified and unchecked information obtained by unknown subordinate employes of a governmental bureau from unknown and unverified sources. The statement that the unsealing of such public records would unnecessarily prolong the work and greatly increase the expense thereof and would seriously interfere with the due performance of the regular duties of Commission's employes is no justification for the

denial of relator's rights to see, examine and test the evidence
14 upon which the value of the property has been fixed, since neither the length of time nor the expense required to perform in a regular, orderly and lawful manner the duties imposed upon it by the Valuation Act, warrants the Commission in declining so to perform them.

That relator is informed, believes and charges that the carriers, persons, manufacturers, jobbers and other persons mentioned and described as furnishing the sources of the above described data, reside great distances apart and that it would require many days for the relator to ascertain whether or not said persons had given such information as well as to verify same and investigate the qualifications of such person to give same. That the persons living in the vicinity of relator's land constituting several hundred in number from whom its land values were obtained are scattered along its line throughout the States of Missouri, Arkansas, Louisiana and Texas. That it would further require many days to compile and analyze the said data and verify the compilation thereof used by the respondent. That delay in granting relator its right to examine said data in order to verify same will in time defeat the right for the reason that said information was obtained several years ago and that many of the persons from whom obtained have already died or removed to unknown addresses and others will continue to do so.

That in hearings upon other tentative valuations, the Commission has uniformly refused to disclose similar data with reference to the carrier under valuation, or to permit the said officers of the Bureau of Valuation to be interrogated concerning same. That subsequent
15 to the service of the above order of October the 9th, and prior to the filing of this petition, relator inquired of said Commission if at the hearing to be had upon its said protest (1) relator would be allowed to introduce the aforesaid underlying data, (2) interrogate the aforesaid respondent officers of the Bureau of Valuation concerning the same, and (3) whether or not the Commission or any Bureau or other person upon its behalf would introduce said underlying data in evidence at said hearing, and the Chief Counsel for the respondent Commission for and in behalf of said Commission, answered "no" to each of said inquiries. Therefore, relator charges that it will be put to trial at the hearing upon said protest without being afforded an opportunity to examine or test the evidence underlying the aforesaid tentative valuation

Relator further charges that the refusal and failure of the respondent Commission to issue a subpœna duces tecum as hereinbefore described amounts to a denial of relator's right to have said persons summoned as witnesses and said documents produced at the hearing to be had upon relator's protest, and thereby deprives it of the hearing to which the law entitles it and which the law requires the respondent Commission to hold.

That the aforesaid proceeding before the Interstate Commerce Commission involves determination of its property rights, and that the action of the respondent in denying it the opportunity of inspecting the aforesaid data prior to such hearing and in declining

to issue said subpœna duces tecum deprives it of the right to the hearing which the said Interstate Commerce Commission is required to hold before deciding the aforesaid issue, and that it is advised that it has no other adequate remedy to secure the examina-
16 tion of such data or the attendance of such witnesses.

Relator, therefore, prays that your Honor grant an order for the issuance of a peremptory writ of mandamus, commanding and directing the respondents to forthwith permit relator and its lawfully authorized agents to examine the aforesaid underlying data, contracts, reports, compilations and records of the Bureau of Valuation upon which said valuations of relator's property are based or which are in any way related thereto at all reasonable times and under reasonable restrictions and safeguards to afford relator and its authorized agents and employes reasonable opportunity to make copies, written and photographic, of the same, and directing the respondent, Interstate Commerce Commission, further to issue a subpœna duces tecum to the following named officers, employes of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at hearing to be had upon relator's protest against the tentative valuation of its property, at Washington, D. C., as aforesaid, bringing with them all of the above described underlying data, reports, compilations, records and memoranda, and all other data and compilations in any way relating to the matters in issue in said proceeding, to wit, Howard M. Jones, Theodore P. Artaud, Andrew Wiley, Charles F. Staples, and Charles W. Needham, or if the Court be not minded to issue its peremptory writ, then for an alternative writ commanding respondents to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the respondents to perform said acts, and for such other and further order and relief as
17 it may be entitled to in the premises. This is the first application for writ of mandamus in this cause.

C. D. DRAYTON,
J. R. TURNEY,
Attorneys for Relator.

18 DISTRICT OF COLUMBIA,
City of Washington, ss:

Personally appeared before me, a notary public, John R. Turney, and made oath in due form of law that he is the General Solicitor of the relator, St. Louis-Southwestern Railway Company, is acquainted with the facts alleged in the foregoing petition, and the same are true.

J. R. TURNEY,
General Solicitor.

Subscribed and sworn to before me this — day of ——, 1922. My commission expires —— —, ——.

——— ———,
Notary Public.

19 EXHIBIT 1 TO PETITION.

Filed October 25, 1922.

67096.

Interstate Commerce Commission,

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of notice dated June 22, 1921, and of order of the Commission entered June 22, 1921, declaring the tentative valuation of the properties of the St. Louis Southwestern Railway Company, Gray's Point Terminal Railway Company, Paragould Southeastern Railway Company, and Central Arkansas and Eastern Railroad Company, Valuation Docket No. 142.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 24th day of October, A. D. 1922.

[SEAL.] GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

20 Interstate Commerce Commission.

Washington, D. C., June 22, 1921.

Valuation Docket No. 142.

The Honorable the Attorney General of the United States:

The Honorable the Governor of Missouri,
Jefferson City, Mo.:

The Honorable the Governor of Illinois,
Springfield, Ill.:

The Honorable the Governor of Texas,
Austin, Tex.:

The Honorable the governor of Arkansas,
Little Rock, Ark.:

The Honorable the Governor of Louisiana,
Baton Rouge, La.:

Public Service Commission,
Jefferson City, Mo.:

Public Utilties Commission,
Springfield, Ill.:

Railroad Commission of Texas,
Austin, Tex.:

Arkansas Corporation Commission,
Little Rock, Ark.:

Railroad Commission of Louisiana,
Baton Rouge, La.:

St. Louis Southwestern Railway Company,
1769 Railway Exchange,
St. Louis, Mo.,
Care R. D. Cobb,
General Auditor:

Gray's Point Terminal Railway Company,
1769 Railway Exchange,
St. Louis, Mo.,
Care R. D. Cobb,
General Auditor:

Paragould Southeastern Railway Company,
1769 Railway Exchange,
St. Louis, Mo.,
Care R. D. Cobb,
General Auditor:

21 Central Arkansas and Eastern Railroad Company,
1769 Railway Exchange,
St. Louis, Mo.,
Care R. D. Cobb,
General Auditor:

The Chicago, Rock Island & Pacific Railway Company,
Room 1106 La Salle Street Station,
Chicago, Ill.,
Care Frank Nay,
Vice President and Comptroller:

Missouri Pacific Railroad Company,
611 Olive St.,
St. Louis, Mo.,
Care F. P. Johnson,
General Auditor:

Louisiana North West Railroad Company,
Homer, La.,
Care G. A. Campbell,
Manager:

St. Louis Southwestern Railway Company of Texas,
Tyler, Tex.,
Care A. R. Wood,
Auditor:

St. Louis Transfer Railway Company,
Union Station, St. Louis, Mo.,
Care C. A. Vinnedge,
Auditor:

The Kansas City, Ft. Scott and Memphis Railway Company,
Frisco Bldg.,
St. Louis, Mo.,
Care E. H. Bunnell,
Auditor:

Choctaw, Oklahoma and Gulf Railroad Company,
Room 1110 La Salle Street Station,
Chicago, Ill.,
Care Frank Nay,
Comptroller:

Louisiana & Arkansas Railway Company,
Texarkana, Ark.,
Care F. S. Carroll,
Auditor:

Louisiana Railway & Navigation Co.,
Shreveport, La.,
Care J. J. Tippen,
Auditor:

You are hereby notified that the Interstate Commerce Commission has completed the tentative valuations of the properties of St. Louis Southwestern Railway Company, Gray's Point Terminal Railway Company, Paragould Southeastern Railway Company, and Central Arkansas and Eastern Railroad Company, as of June 30, 1915, and that said valuations are set forth in the tentative valuation report which is included in the order adopting the same, a copy of which is attached to this notice and made a part hereof.

22 You are required to file with the Commission at its office in Washington on or before thirty (30) days from the —— day of ——, 1921, any protest which you may desire to make to such valuation or to any part of such valuation.

You will file in connection with such protest specification setting forth in detail each particular thing against which the protest is directed.

You are further required to transmit a copy of such protest to each of the other parties to whom this notice is addressed and to file with the Commission for its official use twenty-five (25) additional copies of the same.

By the Commission, Division 1.

GEORGE B. McGINTY,
Secretary.

23 *Order.*

At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office, in Washington, D. C., on the 22nd Day of June, A. D. 1921.

Valuation Docket No. 142.

St. Louis Southwestern Railway Company.
Gray's Point Terminal Railway Company.
Paragould Southeastern Railway Company.
Central Arkansas and Eastern Railroad Company.

It is ordered.—That the following be, and they are hereby declared to be, the tentative valuations of the properties of St. Louis Southwestern Railway Company, Gray's Point Terminal Railway Company, Paragould Southeastern Railway Company, and Central Arkansas and Eastern Railroad Company, as of June 30, 1915:

St. Louis Southwestern Railway Company.

Location and general description of property.—The railroad of St. Louis Southwestern Railway Company, popularly known as the Cotton Belt, hereinafter called the carrier, is a standard gauge, steam railroad, located in the states of Missouri, Arkansas and Louisiana. Its main line extends from Delta, Mo., to Texarkana, on the Arkansas-Texas state line, a distance of 411.628 miles.

In addition to the main line, the carrier owns additional main track, as follows:

From—	To—	Mileage.
Owned and used:		
Delta, Mo.,	Missouri-Arkansas state line	7.838
Malden, Mo., and Lilbourn, Mo.,	Bird's Point, Mo., New Madrid, Mo.	.246
Paragould, Ark.,	Texarkana (Arkansas-Texas state line)	1.086
Altheimer, Ark., and Stuttgart, Ark., Lewisville, Ark.,	Argenta, Ark., Gillett, Ark.	.519
	Arkansas-Louisiana state line	.196
Total		9.885

wned but not used:

Leased to Louisiana North West Railroad Company:		
McNeill, Ark.,	Magnolia, Ark.	.163
Total owned (used and not used)		10.048

The carrier also owns branch lines, as follows:

From	To—	Mileage.
)wned and used:		
Malden, Mo.,	Bird's Point, Mo., and New Madrid, Mo.	63.243
Lilbourn, Mo.,		
Altheimer, Ark.,	Argenta (North Little Rock), Ark., and Gillett, Ark.	78.668
24		
Stuttgart, Ark.,		
Lewisville, Ark.,	Arkansas-Louisiana state line	23.803
Arkansas-Louisiana State line,	Louisiana and Arkansas Junction, La.	35.010
Louisiana and Arkansas Junction, La.,	Center of Red River Levee, La.	1.255
South end of Red River Bridge, La.,	Shreveport, La.	1.731
Total		203.710
Owned but not used:		
Leased to Louisiana North West Railroad Company:		
McNeil, Ark.,	Magnolia, Ark.	6.738
Total owned (used and not used)		210.448

The carrier owns and uses 205.108 miles of yard tracks and sidings (omitting joint sidings of 2.681 miles).

It also owns .920 of a mile of yard tracks and sidings which are leased to the Louisiana North West Railroad Company for exclusive operation.

The carrier operates under lease all of the property of the following companies:

Gray's Point Terminal Railway Company,
Paragould Southeastern Railway Company,
Central Arkansas and Eastern Railroad Company,

and it controls each of these companies through ownership of all th capital stock.

The following tabulation sets forth the main facts as to the owne ship and use of the mileage of the carrier:

	Main-track miles.	All-track miles.
Wholly owned and used	615.338	830.331
Wholly owned, but not used:		
Leased to Louisiana North West Railroad Company	6.738	7.821
Total owned (omitting joint property)	622.076	838.152
Used but not owned:		
Leased from Gray's Point Terminal Railway Company	13.253	59.023
Leased from Paragould Southeastern Railway Company	37.335	43.409
Leased from Central Arkansas and Eastern Railroad Company	43.248	53.140
Total	93.836	155.572
Jointly owned and used, undivided joint mileage	0.000	2.681
Total used, including a total of 2.681 miles jointly owned and used	709.174	988.584

25 A more complete description of the property owned or leased by the carrier will be found in Appendix 1.

Jointly used property.—The carrier shares with other carriers jointly owned and used properties as follows:

With the St. Louis Transfer Railway Company, at St. Louis, Mo., each one-half, 0.036 of a mile of side track.

With Kansas City, Fort Scott and Memphis Railway Company, at Jonesboro, Ark., each one-half, 0.342 of a mile of side track.

With Missouri Pacific Railroad Company, at Pine Bluff, Ark., each one-half, 1.030 miles of side track.

With Missouri Pacific Railroad Company, at Texarkana, Arkansas-Texas state line, each one-half, 0.283 of a mile of side track.

With Choctaw, Oklahoma and Gulf Railroad Company, near Argenta, Ark., each one-half, 0.331 of a mile of side track.

With Louisiana & Arkansas Railway Company and Louisiana Railway & Navigation Company, at Bossier City, La., each one-third, 0.659 of a mile of side track.

Apart from this jointly owned and used fixed property, the major portion of the roadway machines and all of the equipment of the

carrier are jointly owned and used, the St. Louis Southwestern Railway Company of Texas owning 40 per cent, and the carrier 60 per cent.

In Appendix 2, under the caption Leased Railway Property, will be found a statement showing the property other than jointly owned that is used jointly with other companies, and there terms of the use.

Traffic connections.—The main points at which the carrier exchanges traffic with other railroads are set forth in Appendix 1.

Physical conditions affecting construction.—In Appendix 1 are statements as to the topography, geology and climate as affecting the construction of the carrier's railroad.

Economic conditions relating to traffic.—Information in this regard appears in Appendix 1.

Corporate history.—The carrier was incorporated in Missouri on January 16, 1891, and its articles of incorporation were filed in Arkansas on February 7, 1891. The carrier was incorporated for the purpose of taking over the property, rights and franchises of the St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri, hereinafter called the Arkansas, which had been sold at foreclosure to Louis Fitzgerald, purchasing trustee, for a joint reorganization committee. Conveyance was made by Fitzgerald to the carrier on February 9, 1891.

On valuation date the carrier was controlled by the Gould interests.

The principal office of the carrier is at St. Louis, Mo.

Further information in regard to corporate history and the development of fixed physical property is given in Appendix 2.

26 *History of corporate financing, capital stock, and long-term debt.*—From the date of its incorporation to date of valuation the carrier has issued or assumed capital obligations to the amount of $128,350,722.36, of which $123,327,083.20 were outstanding at the date of valuation, as follows:

Capital stock:

Common	$16,500,000.00
Preferred	20,000,000.00
Funded debt	86,827,083.20
Total	123,327,083.20

The carrier has issued short-term notes, excluding renewals, to the amount of $8,600,122.06, of which $6,978,202.10 have been retired, leaving $1,621,919.96 outstanding on date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the carrier, are given in Appendix 2.

Gross and net earnings of the carrier.—The result of the corporate operations of the carrier from June 1, 1891, to date of valuation is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)		$124,428,066.06
Operating expenses (railway operating expenses)		78,629,155.43
Leaving net earnings (net revenue from railway operations)		45,798,910.68
During the same period taxes assessed amounted to (railway tax accruals)	$3,845,205.59	
Uncollectible railway revenues amounted to	1,141.26	
		3,846,346.85
Leaving a net income of (railway operating income)		41,952,563.78
To this should be added income from nonoperating sources of (nonoperative income)		13,404,385.59
Making gross income for the period (gross income)		55,356,949.37
During this period rents and hire of equipment amounted to (chargeable to deductions from gross income)		6,199,090.43
Leaving available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income)		49,157,858.94

The carrier has paid dividends annually, from 1909 to 1914, inclusive, on the preferred stock, at rates varying from 2 per cent to 5 per cent, and amounting, in the aggregate, to $4,575,539.48. No dividends have ever been paid on the common stock.

27 *General balance sheet.*—The general balance sheet stated by the carrier, as showing its financial condition on date of valuation, follows:

Assets.

Investments:		
Investment in road equipment	$67,430,327.70	
Miscellaneous physical property	8,326.45	

Investments in affiliated companies:			
Stocks ..	$3,822,598.45		
Bonds ..	18,719,500.00		
Notes ...	8,845,489.27		
Advances	698,629.37		
		32,086,217.09	
Other investments		10,500.00	
Total			$99,535,371.24
Current assets:			
Cash		535,808.06	
Special deposits.....		382,823.15	
Loans and bills receivable..		962.00	
Net balance receivable from agents and conductors....		49,847.20	
Miscellaneous accounts receivable		1,273,349.70	
Materials and supplies.....		681,116.11	
Interest and dividends receivable		66,814.39	
Rents receivable		990.00	
Other current assets		7,798.64	
Total			2,999,509.25
Deferred assets:			
Working fund advances.....		6,161.73	
Other deferred assets.....		9.00	
Total			6,170.73
Unadjusted debits:			
Insurance premiums paid in advance		17,420.46	
Other unadjusted debits.....		214,027.46	
			231,447.92
Securities issued or assumed—pledged or unpledged:			
Pledged:			
Funded debt	29,766,833.20		
Unpledged:			
Capital stock	250,250.00		
Funded debt	871,000.00		
		30,888,083.20	
Grand total			102,772,499.14

Liabilities.

Capital liabilities:			
Capital stock:			
Common stock:			
Book liability	$16,500,000.00		
Held by or for carrier	143,900.00		
Outstanding in hands of public		$16,356,100.00	
28			
Preferred stock:			
Book liability ...	20,000,000.00		
Held by or for carrier	106,350.00		
Outstanding in hands of public		19,893,650.00	
Total			36,249,750.00
Long-term debt:			
Funded debt unmatured:			
Mortgage bonds:			
Book liability ...	78,550,250.00		
Held by or for carrier	25,091,000.00		
Outstanding in hands of public		53,459,250.00	
Equipment obligations:			
Book liability ...	8,276,833.20		
Held by or for carrier	5,546,833.20		
Outstanding in hands of public		2,730,000.00	
Total			56,189,250.00

Current liabilities:		
Loans and bills payable	1,621,919.96	
Traffic and car service balances payable	5,931.68	
Audited acounts and wages payable	559,562.30	
Miscellaneous accounts payable	314,412.19	
Interest matured unpaid	380,299.15	
Dividends matured unpaid	2,524.00	
Unmatured interest accrued	246,954.85	
Unmatured rents accrued	32,316.66	
Other current liabilities	19,972.58	
Total		3,183,893.37
Deferred liabilities:		
Other deferred liabilities		9.00
Unadjusted credits:		
Tax liability	166,511.09	
Accrued depreciation on equipment	1,843,415.91	
Other unadjusted credits	92,165.52	
Total		2,102,092.52
Corporate surplus:		
Additions to property through income or surplus	163,110.61	
Profit and loss balance	4,884,393.64	
Total		5,047,504.25
Grand total		102,772,499.14

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the carrier to be $67,430,327.70, consisting of the following items:

29 Property of the Arkansas acquired in the reorganization	$46,881,248.60
Extensions	110,057.44
Additions and betterments	16,181,374.45
Net discount on securities	1,985,210.00
Interest on equipment trust obligations	272,437.21
Arbitrary charge credited to profit and loss	2,000,000.00
Total	67,430,327.70

If certain readjustments were made, as detailed in Appendix 2, and if the items in the account were taken at their recorded amounts, this figure would be reduced to $62,853,401.98. Of this figure, however, $46,881,248.60 is the par value of securities issued for the property of the Arkansas, the value of which securities at the time of issue is not determinable. Under the caption Original Cost to Date, in Appendix 2 of this report, it will be shown that the total maximum outlay in creating the property of the Arkansas could not have exceeded $11,301,661.89.

Original Cost to Date.—The original cost to date of all the common-carrier property can not be ascertained for the reason that the records are not obtainable. In Appendix 2 will be found a statement showing the amounts which, according to the accounting records, have been expended in creating or acquiring the common-carrier property.

The original cost of machinery and equipment wholly or partly owned can not be determined. Such of the costs reported by the carrier as are supported by the accounting records follow:

The verifiable costs of the carrier's portion (60 per cent) of 24 units of jointly owned roadway machines are	$11,729.12
The verifiable costs of the carrier's portion (60 per cent) of equipment jointly owned are	9,131,879.56
Total verifiable costs of carrier's portion (60 per cent) of roadway machines and equipment are	9,143,608.68
Total verifiable costs of machinery wholly owned and of carrier's portion (60 per cent) of machinery and equipment jointly owned are	9,143,608.68

Further details with regard to this subject, and more particularly with regard to the costs reported by the carrier for land, machinery and equipment, will be found in Appendix 2.

Cost of Reproduction New, and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned or used by the carrier, are classified as to ownership and use as follows:

	Cost of reproduction.	
	New.	Less depreciation.
Wholly owned and used	$18,424,505	$14,588,819
Owned but not used:		
Leased to Louisiana North West Railroad Company	84,148	62,370

	Cost of reproduction.	
Jointly owned and used:	New.	Less depreciation.
With St. Louis Southwestern Railway Company of Texas, 40 per cent; the carrier, 60 per cent; carrier's portion	10,188,090	7,237,418
With the Kansas City, Fort Scott and Memphis Railway Company, each one-half, carrier's portion	1,334	976
With the Missouri Pacific Railroad Company, at Pine Bluff, Ark., each one-half, carrier's portion	4,302	3,353
With the Missouri Pacific Railroad Company, at Texarkana, Ark., each one-half, carrier's jortion	1,434	1,021
With the Choctaw, Oklahoma & Gulf Railroad Company, each one-half, carrier's portion	1,228	1,122
With the St. Louis Transfer Railway Company, each one-half, carrier's portion	287	188
With the Louisiana & Arkansas Railway Company and the Louisiana Railway & Navigation Company, each one-third, carrier's portion	1,447	1,017
Total	10,198,122	7,245,095
Total owned and used	28,622,627	21,833,914
Used but not owned:		
Leased from:		
Gray's Point Terminal Railway Company	1,269,676	1,040,280
Central Arkansas and Eastern Railroad Company	681,281	518,003
Paragould Southeastern Railway Company	526,000	365,623
Total	2,476,957	1,923,906
Grand total owned	28,706,775	21,986,284
Grand total used	31,099,584	23,757,820

	By States.	Cost of reproduction.	
		New.	Less depreciation.
	In Illinois:		
	Wholly owned and used	6,773	6,035
	In Missouri:		
	Wholly owned and used	3,391,509	2,715,469
	Jointly owned and used:		
	With the St. Louis Transfer Railway Company, each one-half, carrier's portion	287	188
	Total owned and used	3,391,796	2,715,657
31	Used but not owned:		
	Leased from:		
	Gray's Point Terminal Railway Comany	1,269,676	1,040,280
	Paragould Southeastern Railway Company	305,360	213,357
	Total	1,575,036	1,253,637
	Grand total owned	3,391,796	2,715,657
	Grand total used	4,966,832	3,969,294
	In Arkansas:		
	Wholly owned and used	13,973,641	10,990,594
	Jointly owned and used:		
	With the Kansas City, Fort Scott & Memphis Railway Company, each one-half, carrier's portion	1,334	976
	With the Missouri Pacific Railroad Company, at Pine Bluff, each one-half, carrier's portion	4,302	3,353
	With the Missouri Pacific Railroad Company, at Texarkana, each one-half, carrier's portion	1,434	1,021
	With the Choctaw, Oklahoma & Gulf Railroad Company, each one-half, carrier's portion	1,228	1,122
	Total	8,298	6,472
	Total owned and used	13,981,939	10,997,066

	Cost of reproduction.	
	New.	Less depreciation.
Owned but not used:		
Leased to Louisiana North West Railroad Company	84,148	62,370
Used but not owned:		
Leased from:		
Paragould Southeastern Railway Company	220,640	152,266
Central Arkansas and Eastern Railroad Company	681,281	518,003
Total	901,921	670,269
Grand total owned	14,066,087	11,059,436
Grand total used	14,883,860	11,667,335
In Louisiana:		
Wholly owned and used	1,041,498	869,889
Jointly owned and used:		
With the Louisiana & Arkansas Railway Company and the Louisiana Railway & Navigation Company, each one-third, carrier's portion	1,447	1,017
Grand total owned and used	1,042,945	870,906
Not Allocated to States.		
Wholly owned and used	11,084	6,832
Jointly owned and used:		
With the St. Louis Southwestern Railway Company of Texas, 40 per cent; the carrier, 60 per cent, carrier's portion	10,188,090	7,237,418
Grand total owned and used	10,199,174	7,244,250

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights-of-way, and Terminals at the Time of Their Dedication to Public Use, and Present Value of Same.—The carrier owns and uses for common-carrier purposes 8,724.46 acres of lands.

The original cost of these lands, as supported by the accounting records, was $260,051.93, but whether this includes $11,311.05, or any part of same, which was obtained by the carrier for lands sold, it is impossible to determine. In addition to this $260,051.93 the carrier claims costs of $18,356.50, but this claim can not be verified.

The original cost of lands wholly owned by the carrier and devoted partly to carrier and partly to noncarrier purposes, as supported by the accounting records was $1,374,440.96. The original cost of 91.09 acres of lands wholly owned by the carrier but leased to the Louisiana North West Railroad Company, as supported by the accounting records, was $101.50. Under this classification, the carrier claims additional costs of $1,000 which are not supported by the accounting records.

The original cost of lands used but not owned by the carrier, as supported by the accounting records of the owning companies, is given below:

Owner.	Cost.
Gray's Point Terminal Railway Company	$45,100.20
Paragould Southeastern Railway Company:	
Assignable to lands devoted wholly to carrier purposes	6,464.23
Assignable to lands devoted partly to carrier and partly to noncarrier purposes	1,565.50
Central Arkansas and Eastern Railroad Company	40,518.68

The costs of the lands shown as used but not owned may or may not be correct, dependent upon whether the cost of certain part parcels, sold by the owners subsequent to acquisition, is included in costs supported by the accounting records of the owners or in additional claimed costs which are not so supported. This fact it is impossible to ascertain.

The above verified land costs are classified by states, as follows:

33 In Missouri.

		Cost.
Wholly owned:		
Used exclusively for carrier purposes	$38,191.16	
Used partly for carrier and partly for non-carrier purposes	1,275,862.42	$1,314,053.58
Used but not owned:		
Leased from		
Gray's Point Terminal Railway Company		45,100.20
Paragould Southeastern Railway Company		807.13
Total		1,359,960.91

In Arkansas.

Wholly owned:		
Used exclusively for carrier purposes	192,602.68	
Used partly for carrier and partly for non-carrier purposes	97,319.15	
		289,921.83
Leased to Louisiana North West Railroad Company		101.50
Used but not owned:		
Leased from:		
Central Arkansas and Eastern Railroad Company		40,518.68
Paragould Southeastern Railway Company:		
Devoted exclusively to carrier purposes	5,657.08	
Devoted partly to carrier and partly to non-carrier purposes	1,565.50	
		7,222.58
Total		337,764.59

In Louisiana.

Wholly owned:		
Used exclusively for carrier purposes	29,258.09	
Used partly for carrier and partly for non-carrier purposes	1,259.39	
		30,517.48
Total		30,517.48

In addition to the costs shown above, there are additional land costs of $19,066.02, supported by the carrier's accounting records, which are unassignable to any particular classification of lands.

The original cost of .77 of an acre of land used by the carrier, but owned by The Chicago, Rock Island and Pacific Railway Company, and of .05 of an acre of land used by the carrier, but owned by parties other than common carriers, could not be ascertained.

Further details with respect to land costs are given in Appendix 2 under the names of the respective owners.

34 The area and present value of lands as classified are given in the following tabulation:

Classification.	Acres.	Present value.
Owned and used	8,724.46	$2,179,960.23
Owned but not used:		
Leased to Louisiana North West Railway Company	91.09	8,881.16
Used but not owned:		
Leased from:		
Gray's Point Terminal Railway Company	464.20	205,653.53
Paragould Southeastern Railway Company	465.90	34,227.32
Central Arkansas and Eastern Railroad Company	692.40	31,763.61
The Chicago, Rock Island and Pacific Railway Company.	.77	19.25
Missouri Pacific Railroad Company	1.23	10,135.75
Parties other than common carriers	.05	400.00
Total	1,624.55	282,199.46
Grand total owned	8,815.55	2,188,841.39
Grand total used	10,349.01	2,462,159.69
By States.		
In Missouri:		
Owned and used	1,703.21	847,987.06
Used but not owned:		
Leased from:		
Gray's Point Terminal Railway Company	464.20	205,653.53
Paragould Southeastern Railway Company	264.04	13,548.28
Total	728.24	219,201.81
Grand total owned	1,703.21	847,987.06
Grand total used	2,431.45	1,067,188.87

Classification.	Acres.	Present value.
In Arkansas:		
Owned and used	6,445.81	1,114,085.52
Owned but not used:		
Leased to:		
Louisiana North West Railway Company	91.09	8,881.16
35 Used but not owned:		
Leased from:		
Paragould Southeastern Railway Company	201.86	20,679.04
Central Arkansas and Eastern Railroad Company	692.40	31,763.61
Missouri Pacific Railroad Company	1.23	10,135.75
The Chicago, Rock Island and Pacific Railway Company	.77	19.25
Parties other than common carriers	.05	400.00
Total	896.31	62,997.65
Grand total owned	6,536.90	1,122,966.68
Grand total used	7,342.12	1,177,083.17
In Louisiana:		
Owned and used	575.44	217,887.65

Rights in public domain: The original cost of rights in the public domain, located in Arkansas, owned and used by the carrier, as supported by the accounting records, was $67,818.65; their present value is $67,818.65.

Rights in private lands: The original cost of rights in private lands, located in Arkansas, owned and used by the carrier, as supported by the accounting records, was $443.40; their present value is $448.40.

Original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value: The present cost of condemnation and damages or of purchase of lands, owned and used, owned but not used, and used but not owned, by the carrier for common-carrier purposes, in excess of the present value of such lands, are found to be as follows:

In Missouri:	
Wholly owned and used	$576,081
Exclusively used but owned or leased by other common carriers	187,738
Total	763,819
In Arkansas:	
Wholly owned and used	952,811
Exclusively used but owned or leased by other common carriers	72,859
Wholly owned but exclusively used by the Louisiana North West Railroad Company	7,820
Total used	1,025,670
Total owned	960,631
In Louisiana:	
Wholly owned and used	176,540
Total used, entire line	1,966,029
Total owned, entire line	1,713,252

36 The original costs of condemnation and damages or of purchase of lands, owned and used, owned but not used, and used but not owned, by the carrier for common-carrier purposes, in excess of the original costs of such lands, cannot be ascertained.

Property held for purposes other than those of a common carrier.—The carrier owns 222.82 acres of noncarrier lands, the original cost of which, as supported by the accounting records, was $368.45. The carrier claims additional costs of $400 which are not supported by the accounting records. As stated with reference to the original cost of carrier lands, the costs reported in that connection include $1,374,440.96 applicable partly to carrier and partly to noncarrier lands, and $19,066.02 unassignable to any particular classification of lands.

The area, verified original cost, and present value, including the value of improvements thereon, of the noncarrier lands are divided as follows:

	Acres.	Verified cost.	Present value.
In Missouri	62.12	.....	$44,278.00
In Arkansas	151.83	$368.45	64,295.94
In Louisiana	8.87	.....	1,539.00
Total	222.82	368.45	110,112.94

The carrier owns a one-sixth interest in the Pintsch gas compressing plant at Texarkana, Ark., which interest is entered in its books at a value of $7,845.47.

The carrier leases certain track material to S. H. Bolinger & Co., Ltd., saw mill operators, of Bolinger, La., which material is shown by the carrier's books to be valued at $480.98.

The carrier also owns a considerable amount of stocks and bonds of other companies, some of which form a part of the so-called St. Louis Southwestern system. It has also made advances in money to other companies, sometimes upon open account and sometimes upon notes. None of this property is used for common-carrier purposes. The following is a summary of noncarrier property of this kind owned at the date of valuation, showing the par and book values thereof:

Stocks: Property.	Par value.	Book value.
St. Louis Southwestern Railway Company of Texas...	$2,750,000.00	$2,750,000.00
Paragould Southeastern Railway Company.....	100,000.00	13,201.00
The Pine Bluff Arkansas River Railway.....	200,000.00	199,500.00
Gray's Point Terminal Railway Company.....	500,000.00	1.00
Southern Illinois and Missouri Bridge Company.....	10,000.00	10,000.00
Dallas Terminal Railway & Union Depot Company....	10,000.00	9,300.00
The Shreveport Bridge & Terminal Company.....	50,000.00	2,375.00
Eastern Texas Railroad Company	454,500.00	604,666.67
Memphis Railroad Terminal Company	10,000.00	10,000.00
First Infantry Armory Association	500.00	500.00
Memphis Union Station Company	20,000.00	1.00
Terminal Railroad Association of St. Louis.....	205,800.00	1.00
Central Arkansas and Eastern Railroad Company.....	150,000.00	95,000.00
Stephenville North & South Texas Railway Company..	138,300.00	120,152.78
Valley Terminal Railway...	5,000.00	5,000.00
Main Street Warehouse Company	10,000.00	10,000.00
Arkansas and Memphis Railway Bridge and Terminal Company	3,400.00	3,400.00
Total	4,617,500.00	3,833,098.45

Property.	Par value.	Book value.
Bonds:		
St. Louis Southwestern Railway Company of Texas, first mortgage 4 per cent gold bonds	9,445,000.00	9,445,000.00
Second mortgage 4 per cent gold bonds	4,722,500.00	4,722,500.00
Dallas Branch first mortgage 5 per cent bonds	280,000.00	280,000.00
Lufkin Branch first mortgage 5 per cent bonds	292,000.00	292,000.00
Tyler Southeastern Railway first mortgage 4 per cent bonds	660,000.00	660,000.00
Tyler Southeastern Railway first mortgage 4 per cent bonds	330,000.00	330,000.00
The Pine Bluff Arkansas River Railway	126,000.00	126,000.00
Southern Illinois and Missouri Bridge Company	600,000.00	600,000.00
Dallas Terminal Railway & Depot Company	731,000.00	731,000.00
Gray's Point Terminal Railway Company	838,000.00	838,000.00
Stephenville North & South Texas Railway Company	184,000.00	184,000.00
Paragould Southeastern Railway Company	511,000.00	511,000.00
Total	18,719,500.00	18,719,500.00
Certificates of indebtedness:		
St. Louis Southwestern Railway Company of Texas	8,455,840.47	8,455,840.47
Notes:		
St. Louis Southwestern Railway Company of Texas	186,360.00	186,360.00
Dallas Terminal Railway & Depot Company	203,288.80	203,288.80
Total	389,648.80	389,648.80

	Property.	Par value.	Book value.
38	Advances for additions and betterments:		
	St. Louis Southwestern Railway Company of Texas...	469,235.66	469,235.66
	Paragould Southeastern Railway Company.....	1,757.54	1,757.54
	The Pine Bluff Arkansas River Railway.....	29,174.49	29,174.49
	Gray's Point Terminal Railway Company.....	6,653.06	6,653.06
	Southern Illinois and Missouri Bridge Company....	40,099.29	40,099.29
	Dallas Terminal Railway & Union Depot Company....	2,455.75	2,455.75
	Memphis Railroad Terminal Company	111,297.10	111,297.10
	Stephenville North & South Texas Railway Company..	5,956.48	5,956.48
	Valley Terminal Railway...	12,000.00	12,000.00
	Arkansas and Memphis Railway Bridge and Terminal Company	20,000.00	20,000.00
	Total	698,629.37	698,629.37
	Operating advances:		
	St. Louis Southwestern Railway Company of Texas...	800,722.73	800,722.73
	The Pine Bluff Arkansas River Railway.....	128,174.72	128,174.72
	Dallas Terminal Railway & Union Depot Company....	741.27	741.27
	Total	929,638.72	929,638.72
	Grand Total.....	33,810,757.36	33,026,355.81

The three items for operating advances, totaling $929,638.81, represent advances made by the carrier to cover deficits from operation not liquidated or charged off.

Further details with regard to miscellaneous physical property and investments in other companies will be found in Appendix 2.

Aids, gifts, grants of rights-of-way and donations.—The records of the predecessor companies are almost entirely lacking. The records of the carrier show money gifts to it of $28,095.75, and to the Arkansas, a predecessor company, of $40,000.00, or a total of $68,095.75.

The station building at Kendall's Mill, Ark., was donated to the carrier, but neither the cost nor the value of this building at the time it was donated can be ascertained.

The carrier owned, on date of valuation, lands known to have been received by its as aids, gifts, grants of rights-of-way or donations, as follows:

39 Classification.	Acres.	Present value.
Carrier lands:		
Owned and used by the carrier:		
In Missouri	911.94	$127,865.33
In Arkansas	3,091.86	718,206.19
In Louisiana	312.49	78,009.64
Total	4,316.29	924,081.16
Owned by the carrier but used exclusively by Louisiana North West Railroad Company:		
In Arkansas	52.89	3,971.98
Total carrier lands	4,369.18	928,053.14
Noncarrier lands owned by the carrier:		
In Arkansas	18.06	30,712.49
In Louisiana	4.17	834.00
Total	22.23	31,546.49

In 1875 and 1876, the New Madrid and West Prairie Road Company, a predecessor of the Arkansas, received a gift from New Madrid County, Mo., of 108,060 acres of land. The unsold portion of this land, 70,040 acres, was acquired by the Little River Valley & Arkansas Railroad Company, another predecessor of the Arkansas, on September 7, 1876, when that company took over all the property, rights and franchises of the New Madrid and West Prairie Road Company, except that necessary for railroad purposes. This land was sold by the Little River Valley & Arkansas Railroad Company on November 28, 1881, as described elsewhere in this report.

The value of donated lands at the time acquired can not be ascertained.

Materials and supplies.—As appears in the general balance sheet, the value of materials and supplies on hand is shown by the carrier's records to have been, upon date of valuation, $681,116.11, distributed as follows:

Materials in general store	$265,176.27
Unfinished shop orders	6,924.78
Fuel store	13,344.82
Bridge and building store	113,587.64
Superintendent's store	19,477.49
Cross ties	215,573.38
Steel rails	1,669.72
Second-hand rails	19,839.32
Stationery	15,731.06
Material suspense account	9,791.63
Total	681,116.11

40 *Final value.*—After careful consideration of all the facts herein contained, including the excess cost of carrier lands, appreciation, depreciation, going-concern value, working capital including materials and supplies, and al lother matters which appear to have a bearing upon the values herein reported, the value, as that term is used in the Interstate Commerce Act, of the property of the carrier, owned and used, owned but not used, and used but not owned, devoted to common-carier purposes, is found to be as follows:

Wholly owned and used	$26,716,924
Owned but not used, leased to Louisiana North West Railroad Company	75,000
Used but not owned:	
Leased from:	
Gray's Point Terminal Railway Company.	11,321,000
Central Arkansas & Eastern Railway Company	600,000
Paragould Southeastern Railway Company	424,000
The Chicago, Rock Island & Pacific Railway Company	19
Missouri Pacific Railroad Company	10,136
Parties other than common carriers	400
Total used but not owned	2,355,555
Total used	29,072,479
Total owned	26,792,424

There is included in the value above stated as wholly owned and used the sum of $1,216,924 on account of working capital including materials and supplies.

Gray's Point Terminal Railway Company.

Location and general description of property.—The railroad of Gray's Point Terminal Railway Company, hereinafter called the Gray's Point, is a standard gauge, steam railroad, located entirely in the state of Missouri. It extends from Delta, Mo., the northern terminus of the carrier, in a northerly direction to Illmo, Mo., 13.253 miles, of which 7.364 miles are double tracked. The Gray's Point also owns yard and side tracks totaling 38.406 miles. It road thus embraces 59.023 miles of all tracks owned.

Jointly used property.—The Gray's Point has no jointly owned and used property.

Traffic connections.—The railroad of the Gray's Point connects at Illmo, Mo., with the lines of Chicago and Eastern Illinois Railroad Company, Illinois Central Railroad Company and Missouri Pacific Railroad Company at Delta, Mo., with the lines of St. Louis-San Francisco Railroad Company and of the carrier; and at Fremsdorf, Mo., with the lines of St. Louis-San Francisco Railroad Company.

Physical conditions affecting construction.—The line of this railroad traverses the bottom lands along the Mississippi River. The land is level or slightly rolling with an alluvial soil.

The temperature ranges from 110 degrees above zero to 10 degrees below zero.

41 The rainfall averages about 45 inches annually.

Economic conditions relating to traffic.—The principal products of the region traversed by the railroad of the Gray's Point are those of the farm, consisting mainly of corn and other grain.

Corporate history.—The Gray's Point was incorporated May 23, 1896, under the general laws of the state of Missouri, for the purpose of constructing a railroad from Delta, Cape Girardeau County, to Gray's Point, Scott County, Mo., on the Mississippi River. The control of the Gray's Point is vested in the carrier through ownership of the entire capital stock. The property has never been operated by the owners, but was leased to the carrier for exclusive operation on November 5, 1897, before the road was completed and put in operation.

The principal office of the Gray's Point is at St. Louis, Mo.

History of corporate financing, capital stock and long-term debt.—The Gray's Point has issued a total of $1,838,000 in capital obligations, excluding non-negotiable debt to affiliated companies in the amount of $6,653.06, as follows:

Capital stock	$500,000
Mortgage bonds	1,338,000
Total	1,838,000

The entire amount of $1,838,000 was outstanding as of the date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Gray's Point, are given in Appendix 2.

Gross and net earnings of the Gray's Point.—The result of the corporate operations of the Gray's Point from December, 1898, to June 30, 1915, is stated in detail in Appendix 2, and is summarized as follows:

Income from nonoperating sources of (nonoperating income)	$483,191.66
Making gross income for the period (gross income)	483,191.66

all of which was available for the payment of interest and dividends and for other corporate purposes.

The Gray's Point has paid no dividends.

General balance sheet.—The general balance sheet stated by the Gray's Point, as showing its financial condition on date of valuation, follows:

Assets.

Investments:		
Investments in road and equipment		$1,844,653.06
42 Current assets:		
Special deposits	$900.00	
Rents receivable (rental from the carrier)	19,541.66	
Total		20,441.66
Grand total		1,865,094.72

Liabilities.

Stock:		
Capital stock		$500,000.00
Long-term debt:		
Funded debt unmatured	$1,338,000.00	
Non-negotiable debt to affiliated companies	6,653.06	
Total		1,344,653.06
Current liabilities:		
Interest matured unpaid	900.00	
Unmatured interest accrued	19,541.66	
Total		20,441.66

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the Gray's Point to be $1,844,653.06, which consists of the following items:

Original construction	$839,000.00
Illmo terminals	454,359.90
Other additions and betterments	551,293.16
Total	1,844,653.06

Included in the total investment, above stated, is $26,595.44 representing the cost of noncarrier lands. After deducting this amount, the investment account would stand at $1,818,057.62.

The Gray's Point owns no rolling stock.

Item of $839,000 consists of $500,000 par value of capital stock and $339,000 par value first mortgage bonds issued to the contractor for original construction.

Items of $454,359.90 and $551,293.16 represent additions and betterments to the property of the Gray's Point made by the lessee, the carrier, in payment for which it has received $161,000 first mortgage 5 per cent bonds and $838,000 first refunding and extension 5 per cent mortgage bonds of the Gray's Point, leaving a balance of $6,653.06 unpaid on valuation date.

Original cost to date.—The original cost to date of all the common-carrier property cannot be ascertained for the reason that the records are not obtainable. According to the accounting records of the Gray's Point, $1,254,457.62 has been expended in the construction and improvement of its property.

43 The Gray's Point claims $10,620.40 as original cost of shop machinery and tools, which amount represents estimates made by it and not verifiable from the accounting records.

In Appendix 2 will be found further information with regard to this subject.

Cost of reproduction new, and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Gray's Point, are $1,269,676 and $1,040,280, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of lands, rights-of-way, and terminals at the time of their dedication to public use, and present value of same.—The Gray's Point owns 464.20 acres of lands devoted to carrier purposes. The original cost of these lands, as supported by the accounting records, was $45,100.20. In addition, the Gray's Point claims costs of $10,450.45 which are not supported by the accounting records. The Gray's Point has received $143.50 as proceeds from part parcels sold, which amount has been verified but has not been deducted from the costs supported by the accounting records for the reason that the parcels to which it applies cannot be identified.

The present value of the lands owned by the Gray's Point and devoted to carrier purposes is $205,653.53.

Further details with respect to cost of lands are given in Appendix 2.

Original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value.—The present costs of condemnation and damages or of purchase of lands owned but not used leased to the carrier, in excess of the present value of such lands, is found to be $169,491.

The original cost of condemnation and damages or of purchase of lands owned but not used by the Gray's Point, in excess of the original costs of such lands, cannot be ascertained.

Property held for purposes other than those of a common carrier.—The Gray's Point owns 23.47 acres of non-carrier land, with a present value of $19,442.45. The cost of said non-carrier lands was $26,595.44, which sum is supported by the accounting records. This cost is included in the investment in road and equipment account of the Gray's Point.

Aids, gifts, grants of rights-of-way, and donations.—The Gray's Point received donations of 17.05 acres of carrier lands, with a present value of $10,521.10. It received as a donation from Mary H. G. Houck, Louis Houck, and W. H. Miller an undivided one-half interest in 80 acres of land at Graysboro, Mo. A part of this land was sold, the Gray's Point receiving as its proportion of the consideration paid therefor the sum of $2,432.26. The remaining acreage was divided between the Gray's Point and the donors, the Gray's Point receiving title to 12.87 acres. It owned these 12.87 acres of land on valuation date; they have been classified by us as non-carrier, with a present value of $965.25.

44 The value of the donated lands at time acquired can not be ascertained.

Materials and supplies.—The Gray's Point does not maintain any stock of materials and supplies.

Final value.—After careful consideration of all the facts herein contained, including excess cost of carrier lands, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Gray's Point, owned but not used, leased to the carrier, devoted to common-carrier purposes is found to be $1,321,000.

No working capital including materials and supplies is found to be owned and used by the Gray's Point, a nonoperating company.

Paragould Southeastern Railway Company.

Location and general description of property.—The railroad of Paragould Southeastern Railway Company, hereinafter called the Paragould, is a single track, standard gauge, steam railroad, located in northeastern Arkansas and southeastern Missouri. The owned mileage extends from Paragould, Ark., to Hornersville, Mo., and thence to Blytheville, Ark., a distance of 37.335 miles. The Para-

gould also owns yard and side tracks totaling 6.074 miles. Its road thus embraces 43.409 miles of all tracks owned.

Jointly used property.—The Paragould has no jointly owned and used property.

Traffic connections.—The railroad of the Paragould connects with the lines of the

Blytheville, Leachville and Arkansas Southern Railroad Company, at Arbyrd and Chickasawba, Ark.

Blytheville, Burdette & Mississippi River Railway Company, at Chickasawba, Ark.

The carrier, at Paragould, Ark.

Physical conditions affecting construction.—The country traversed by the railroad of the Paragould is low and level, with an alluvial soil. Temperatures range from 110 degrees above zero to 10 degrees below zero. The average annual rainfall is about 48 inches.

Economic conditions relating to traffic.—The region served by this road is primarily an agricultural district, the principal crops being corn and cotton. The manufacture of staves and other products of hardwood timber is the principal industrial activity.

Corporate History.—The Paragould was incorporated October 11, 1887, under the general laws of Arkansas, as the Paragould and Buffalo Island Railway Company, for the purpose of constructing a narrow gauge tram road eastward from Paragould for about eight miles. By an amendment to the articles of incorporation, filed in the states of Arkansas and Missouri November 13, 1893, the corporate name was changed to Paragould Southeastern Railway
45 Company, and authority granted to standard gauge the line and extend the same to Cardwell, Mo. Further extensions of the line to Hornersville, Mo., and to Blytheville, Ark., were authorized by amendments filed August 12, 1897, and December 11, 1901 respectively. The carrier controls the Paragould through ownership of its entire capital stock, and the entire property is leased to the carrier for sole operation under indenture dated January 1, 1914. Prior to that date the property was operated by the Paragould.

The principal office of the Paragould is at St. Louis, Mo.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—The Paragould has issued a total of $736,000 in stocks and bonds, and incurred non-negotiable debt to affiliated companies aggregating $483,672.98, a total of $1,219,672.98. Of this amount $612,757.5 were outstanding on the date of valuation, as follows:

Capital stock	$100,000.0
Mortgage bonds	511,000.0
Non-negotiable debt	1,757.5
Total	612,757.5

The Paragould has issued short-term notes to the amount of $36 254.31, which have all been retired.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Paragould, are given in Appendix 2.

Gross and net earnings of the Paragould.—The result of the corporate operations of the Paragould from July 1, 1895, prior to which date it is without record of its income, to June 30, 1915, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenue)	$1,076,677.40
Operating expenses (railway operating expenses)	891,667.04
Leaving net earnings (net revenue from railway operations)	185,010.36
During the same period taxes assessed amounted to (railway tax accruals)	38,255.94
Leaving a net income (railway operating income)	146,754.42
To this should be added income from non-operating sources of (non-operating income)	63,238.78
Making gross income for the period (gross income)	209,993.20
During this period rents and hire of equipment amounted to (chargeable to deductions from gross income)	62,715.92
Leaving available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income)	147,277.28

No dividends have ever been accrued or paid on the capital stock of the Paragould.

46 *General balance sheet.*—The general balance sheet stated by the Paragould, as showing its financial condition on date of valuation, follows:

Assets.

Investments:	
Investment in road and equipment	$518,148.36
Current assets:	
Rents receivable	12,775.00
Grand total	$530,923.36

Liabilities.

Stock:	
Captial stock	100,000.00

Long-term debt:		
Funded debt unmatured	$511,000.00	
Non-negotiable debt to affiliated companies	1,757.54	
Total		512,757.54
Current liabilities:		
Interest matured unpaid		12,775.00
Total liabilities		625,532.54
Corporate surplus:		
Profit and loss balance—debit		94,609.18
Total after deducting deficit		530,923.36

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the Paragould to be $518,148.36, consisting of the following items:

Original road acquired		$10,000.00
Capital stock issued therefor	$10,000.00	
Reconstruction and extensions:		
Capital stock issued therefor	90,000.00	
Mortgage bonds issued therefor	100,000.00	
Other expenditures	200,460.90	
		390,460.90
Expenditures for additions and betterments (net)		117,687.46
Total		518,148.36

If certain readjustments are made, as detailed in Appendix 2, this amount will be decreased to $479,823.76.

It is not possible from obtainable records to state the above sums by primary accounts.

47 The Paragould owns no equipment, roadway machines, shop machinery, or tools.

It appears definitely from the above that nearly 40 per cent of the investment account is made up of securities charged at par, and it is probable, as hereinafter shown in Appendix 2, that the total of this account is represented by the par value of securities issued.

Original cost to date.—The original cost to date of all the common-carrier property cannot be ascertained, for the reason that the records are not obtainable. According to the accounting records of the Paragould, $462,687.73 has been expended in the construction and

provement of its property. A large part of the cost is made up of urities issued at par.

In Appendix 2 will be found further information with regard to s topic.

Cost of reproduction new, and cost of reproduction less depreciation.—The cost of reproduction new and the cost of reproduction s depreciation of all common-carrier property, other than land, ned by the Paragould, are as follows:

holly owned but not used:	Cost of reproduction.	
Leased to the carrier:	New.	Less depreciation.
In Missouri	$305,360	$213,357
In Arkansas	220,640	152,266
Total	526,000	365,623

These amounts, classified in conformity with the classification of xpenditures for road and equipment as prescribed by us, are own in the summary sheets which are a part of Appendix 1.

Cost of lands, rights-of-way, and terminals at the time of their edication to public use, and present value of same.—The Paraould owns 465.90 acres of lands devoted to carrier purposes. The riginal cost of these lands, as supported by the accounting records, as $6,464.23, of which sum $5,657.08 covers lands located in rkansas and $807.15 covers lands located in Missouri. The Paraould claims additional costs of $733.75 which are not supported y the accounting records. The Paragould has received $421.42 as roceeds from part parcels sold, which amount has been verified ut has not been deducted from the verified costs for the reason that he parcels to which it applies cannot be identified.

The cost of the land owned by the Paragould and devoted partly o carrier and partly to non-carrier purposes, located in Arkansas nly, was $1,565.50, which cost is supported by the accounting records.

18 The present value of the lands owned by the Paragould and devoted exclusively to carrier purposes is $34,227.32, s follows:

Leased to the carrier:

	Acres.	Present value.
In Arkansas	201.86	$20,679.04
In Missouri	264.04	13,548.28
Total	465.90	34,227.32

Further information with respect to land costs is given in Appendix 2.

Original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value.—

The present costs of condemnation and damages or of purchase of lands owned but not used, leased to the carrier, in excess of the present value of such lands, are found to be as follows:

Wholly owned and used exclusively by the carrier:

In Missouri	$18,247
In Arkansas	25,005
Total owned	43,252

The original cost of condemnation and damages or of purchase of lands owned but not used by the Paragould, in excess of the original cost of such lands, cannot be ascertained.

Property held for purposes other than those of a common carrier.—The Paragould owns 61.76 acres of non-carrier land, located in Arkansas, with a present value of $12,963.05, the cost of which, as supported by the accounting records, was $38,324.60. This cost is included in the investment in road and equipment account of the Paragould.

Aids, gifts, grants of rights-of-way, and donations.—The Paragould received donations of carrier land amounting to 262.08 acres, said lands having a present value of $20,940.79. Of these totals, 88.13 acres, with a present value of $10,828.18, are in Arkansas, and 173.95 acres, with a present value of $10,112.61, are in Missouri. The Paragould received gifts of non-carrier lands, all in Arkansas, to the extent of 0.06 of an acre, with a present value of $1.20. The value of said lands at the time acquired can not be ascertained.

Materials and supplies.—The Paragould does not maintain any stock of materials and supplies.

Final value.—After careful consideration of all the facts herein contained, including excess cost of carrier lands, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Paragould, owned but not used, leased to the carrier, devoted to common-carrier purposes, is found to be $424,000.

No working capital including materials and supplies is found to be owned and used by the Paragould, a nonoperating company.

49 Central Arkansas and Eastern Railroad Company.

Location and general description of property.—The railroad of Central Arkansas and Eastern Railroad Company, hereinafter called the Central, is a single track, standard gauge, steam railroad, located in the central part of Arkansas. The owned mileage extends from Stuttgart, Ark., to England, Ark., with a branch line extending from Rice Junction, Ark., to Hazen, Ark. The total length of the main and branch lines is 43.248 miles. The Central also owns additional main track of .663 of a mile, and yard and side tracks of

9.229 miles. Its road thus embrces 53.140 miles of all tracks owned.

Jointly used property.—The Central has no jointly owned and used property.

Traffic connections.—The railroad of the Central connects at Hazen, Ark., with the lines of the Chicago, Rock Island and Pacific Railway Company; at Stuttgart, Ark., with the main line of the carrier; and at England, Ark., with a branch line of the carrier.

Physical conditions affecting construction.—The country traversed by the railroad of the Central is the bottom lands of White River, which are low and level, with an alluvial soil.

The temperature ranges from 110 degrees above zero to 10 degrees below zero. The average annual rainfall is about 48 inches.

Economic conditions relating to traffic.—The region served by the railroad of the Central is primarily an agricultural district, the principal crops being corn and cotton.

Corporate history.—The Central was incorporated May 18, 1901, under the general laws of Arkansas, for the purpose of constructing and operating a railroad from England, Ark., to Ryan (then McGregor), Ark. An amendment to the original charter, dated February 16, 1910, provided for the construction of an extension from Ryan, Ark., to Stuttgart, Ark., and the building of a branch from Rice Junction, Ark., to Hazen, Ark. Control of the Central is vested in the carrier through ownership of the entire capital stock, and the property of the Central is leased to the carrier for sole operation.

The principal office of the Central is at Little Rock, Ark.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—The early financing of the Central is obscure, since, with the exception of a minute book of the stockholders' and directors' meetings, there are no accounting records in existence for the period prior to June 30, 1910, when the property was leased to the carrier.

Obtainable records show that the Central has issued a total of $1,235,000 in capital obligations, all of which were outstanding on date of valuation, as follows:

Capital stock	$150,000
First mortgage bonds	1,085,000
Total	1,235,000

50 The Central has issued short-term notes to the amount of $195,000, which have all been retired.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Central, are given in Appendix 2.

Gross and net earnings of the Central.—The result of the corporate operations of the Central from October, 1911, when the

entire line was opened for operation, to valuation date, is stated in detail in Appendix 2, and is summarized as follows:

Income from nonoperating sources of (nonoperating Income)	$195,361.75
Making gross income for the period (Gross income)	195,361.75

All of which was available for the payment of interest and dividends and for other corporate purposes.

The Central has paid no dividends.

Gentral balance sheet.—The general balance sheet stated by the Central, as showing its financial condition on valuation date, follows:

Assets.

Investments:		
Investment in road and equipment		$1,070,139.96
Current assets:		
Special deposits	$27,525.00	
The carrier—general account	164,860.04	
Total		192,385.04
Grand total		1,262,525.00

Liabilities.

Stock:	
Capital stock	$150,000.00
Long-term debt:	
Funded debt unmatured	1,085,000.00
Current liabilities:	
Interest matured unpaid	37,525.00
Grand total	1,262,525.00

Investment in road and equipment.—The investment in road and equipment, including land, on valuation date, is stated in the books of the Central to be $1,070,139.96, which consists of the following items:

51	Original capital stock issue	$25,000.00
	Stock dividend in June, 1910	75,000.00
	Construction of extension and branch	947,682.04
	Additions and betterments	22,457.92
	Total	1,070,139.96

The Central owns no equipment; such as it originally had has been retired.

The money outlay in constructing the property for which the $25,000 of original stock was paid is unknown.

The items of $947,682.04 and $22,457.92 represent cash, obtained by the Central through the sale of bonds and the issuance of short-term notes. If the stock dividend amounting to $75,000 were deducted the investment account would be reduced to $995,139.96.

Further facts with regard to this subject will be found in Appendix 2.

Original cost to date.—The original cost to date of all the common carrier property can not be ascertained for the reason that the records are not obtainable.

According to the accounting records of the Central, $995,139.96 has been expended in the construction and improvement of its property.

Further details with regard to this subject are given in Appendix 2.

Cost of reproduction new, and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Central, are $681,281 and $518,003, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of lands, rights-of-way, and terminals at the time of their dedication to public use, and present value of same.—The Central owns 692.40 acres of lands devoted to carrier purposes, and claims the cost of these lands to have been $44,984.87. Of this amount $40,518.68 are supported by the accounting records, and the balance, $4,466.19, is not so supported. The Central has received $1,700 as proceeds from part parcels sold, which amount has been verified, but has not been deducted from the verified costs for the reason that the parcels to which it applies cannot be identified.

The present value of the lands owned by the Central and devoted to carrier purposes is $31,763.61.

Further information with respect to land costs is given in Appendix 2.

Original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value.—The present cost of condemnation and damages or of purchase of lands owned but not used, leased to the carrier, in excess of the present value of such lands, is found to — $41,499.

52 The original cost of condemnation and damages or of purchase of lands owned but not used by the Central, in excess of the original cost of such lands, cannot be ascertained.

Property held for purposes other than those of a common carrier.—The Central owns no non-carrier property.

Aids, gifts, grants of rights-of-way, and donations.—The Central received donations of 173.66 acres of carrier land, with a present

value of $8,123.40. The value of said lands at time acquired can not be ascertained.

Materials and supplies.—The Central does not maintain any stock of materials and supplies.

Final value.—After careful consideration of all the facts herein contained, including excess cost of carrier lands, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Central, owned but not used, leased to the carrier, devoted to common-carrier purposes, is found to be $600,000.

No working capital including materials and supplies is found to be owned and used by the Central, a non-operating company.

In General.

With respect to each of the foregoing named carriers embraced in this proceeding, in addition to other matters stated, the following paragraphs apply as a part of each of the respective valuations:

Appendices.—Attached hereto and made a part hereof are Appendices 1 and 2. Appendix 1 gives the explanatory text and summary sheets showing the classification of the cost of reproduction new and cost of reproduction less depreciation, above set forth, in conformity with the classification of expenditures for road and equipment prescribed by the Commission.

Appendix 2 shows further details as to corporate history, the development of fixed physical property, history of capital financing, investment in road and equipment, original cost to date, and leased railway property, excepting those features treated in the text of the report.

Reference is made to Appendix 3 of the report in *Texas Midland Railroad,* 1 Val. Rep. 1, 108, and Appendix A to the supplemental tentative valuation in Valuation Docket 4, *The Kansas City Southern Railway Company, et al.,* under date of March 31, 1921, which are hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported.

The engineering, land and accounting reports, copies of which have been furnished to interested parties, give the details respecting the figures here reported, and are on file in the Bureau of Valuation of the Commission, open to public inspection, and subject to the direction of Congress, and these reports are referred to for greater particularity as to the matters herein stated.

53 By the Commission, Division 1.

[SEAL.] GEORGE B. McGINTY,
Secretary.

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APPENDIX 1.

Explanatory Text.

Characteristics of Country.

The lines of the carrier traverse in general a flat country, with a river-silt soil in the low lands and sandy clay in the cuts. Originally heavily timbered with much swamp, the adjacent land has been gradually cleared and drained so that today much of the country is under cultivation, though some minor stretches of line in central and northern Arkansas and in Missouri are still swampy and subject to overflow, especially in the vicinity of the St. Francis River.

Lumbering, at one time almost the sole industry on these lines, is still continued on a large scale south of Pine Bluff, Ark., where the country was formerly covered with forests of yellow pine. Much of the yellow pine has now been cut off and is being followed in many places with growths of hard wood.

South of Pine Bluff the land is rolling with a sandy, clay soil.

North of Pine Bluff the lumbering industry is still important in certain localities where hardwood timber is utilized for staves and ties.

On the cultivated lands the principal crops are rice, cotton and corn.

The temperature ranges from about 110 degrees above zero to 5 degrees below. The annual rainfall averages about 48 inches.

Location and General Description of Property.

In addition to its owned mileage, the carrier leases and operates the properties of the Gray's Point, the Paragould, and the Central. The following is a statement of the mileage owned or used:

	First main track.		Additional main.	Yard tracks and sidings.	Joint sidings.*	Total.
	Main line.	Branch line.				
Owned and used:						
In Missouri.....	63.390	63.243	8.084	37.960	0.036	172.677
In Arkansas....	348.238	102.471	1.801	151.969	1.986	604.479
In Louisiana....	.....	37.996	....	15.179	0.659	53.175
Total	411.628	203.710	9.885	205.108	2.681	830.331
Owned but not used:						
Leased to Louisiana North West Railroad Company—in Louisiana	.....	6.738	0.163	0.920	....	7.821
Grand total owned (used and not used)	411.628	210.448	10.048	206.028	2.681	838.152

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	First main track.		Additional main.	Yard tracks and sidings.	Joint sidings.*	Total.
	Main line.	Branch line.				
Used but not owned:						
Leased from the Paragould, owner:						
In Arkansas....	.....	16.873	....	4.103	....	20.976
In Missouri.....	.....	20.462	....	1.971	....	22.433
Total	.....	37.335	....	6.074	....	43.409
Leased from owner:						
The Gray's Point in Missouri....	13.253	.....	7.364	38.406	....	59.023
The Central—in Arkansas	.....	43.248	0.663	9.229	....	53.140
Total (used but not owned)...	13.253	80.583	8.027	53.709	....	155.572
Grand total used (owned and not owned)...	424.881	284.293	17.912	258.817	2.681	985.903

The carrier owns a large freight terminal in St. Louis, Mo., and operates under trackage rights over lines of terminal companies to East St. Louis, Ill. Between East St. Louis, Ill., and Thebes, Ill., it uses under trackage rights the line of the Missouri Pacific Railroad Company. At Thebes it operates over the Trans-Mississippi bridge of the Southern Illinois and Missouri Bridge Company as one of the tenant owner lines.

The northern terminus of the owned lines is at Illmo, Mo. The main line extends thence southwesterly to Texarkana, Arkansas-Texas state line.

The carrier operates into Memphis, Tenn., over the lines of other carriers, freight traffic moving over the lines of the Missouri Pacific Railroad Company from Fair Oaks, Ark., and passenger
56 traffic over the lines of The Chicago, Rock Island and Pacific Railway Company from Brinkley, Ark. It reaches Cairo, Ill., using under trackage rights the tracks of the Missouri Pacific Railroad Company between that point and Thebes, Ill.

The principal points on its lines are Paragould, Blytheville, Jonesboro, Brinkley, Little Rock, Pine Bluff, Fordyce, and Camden, Ark., and Shreveport, La.

The general offices of the carrier are at St. Louis, Mo., and the operating headquarters are at Pine Bluff, Ark. The larger freight yards and terminals are located at Illmo, Mo., Shreveport, La., and Little Rock and Pine Bluff, Ark.

*The mileage for joint sidings is the undivided mileage, and is not included in the total for all tracks.

Traffic connections.—The railroad of the carrier exchanges traffic with all roads entering St. Louis, Mo., and East St. Louis., Ill., by means of various terminal companies. Further, it exchanges traffic directly with other roads at the following-named points:

With:

Butler County Railroad Company, at Piggott, Ark.;

The Chicago, Rock Island and Pacific Railway Company, at Argenta, Brinkley, Fordyce and Stuttgart, Ark.;

The Central, at Stuttgart and England, Ark;

Fordyce & Princeton Railroad Company, at Fordyce, Ark;

Freeo Valley Railroad Company, at Eagle Mills, Ark.;

The Gray's Point at Delta, Mo.;

Jonesboro, Lake City and Eastern Railroad Company, at Jonesboro, Ark.;

The Kansas City Southern Railway Company, at Shreveport, La., and Texarkana, Arkansas-Texas state line;

Louisiana & Arkansas Railway Company, at Shreveport, La., and Stamps, Ark.;

Louisiana North West Railroad Company, at Magnolia, Ark.;

Louisiana Railway & Navigation Company, at Shreveport, La.;

Missouri and North Arkansas Railroad Company, at Fargo, Ark.;

Missouri, Kansas & Texas Railway Company, at Shreveport, La.;

Missouri Pacific Railroad Company, at Dexter and Samoa, Mo., at Argenta, Camden, Clarendon, Fair Oaks, Paragould and Pine Bluff, Ark., and at Texarkana, Arkansas-Texas state line;

Ouachita Valley Railway Company, at Millville, Ark.;

The Paragould, at Paragould, Ark.;

The Pine Bluff, Arkansas River Railway Company at Rob Roy, Ark.;

St. Louis, San Francisco Railroad Company at Campbell, Delta, Lilbourn, Malden and Zeta, Mo., and at Jonesboro and Parma, Ark.;

St. Louis, Kennett & Southeastern Railroad Company at Piggott, Ark.;

St. Louis, Southwestern Railway Company of Texas at Texarkana, Arkansas-Texas state line;

The Shreveport Bridge & Terminal Company at Shreveport, La.;

Southern Pacific Lines, at Shreveport, La.;

Thornton & Alexandria Railway Company at Thornton, Ark.; and

Vicksburg, Shreveport & Pacific Railway Company at Shreveport, La.

Road.

The ruling grade in each direction on the main line between Illmo and Texarkana is 0.5 per cent north of Pine Bluff and 1 per cent south of Pine Bluff. The branch lines have ruling grades ranging from 0.4 per cent on the branch from Altheimer to Argenta, Ark., to 1.2 per cent on the line from McNeil to Magnolia, Ark. The ordinary maximum curvature is four degrees.

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Grading has been computed upon the two-way basis and is generally light, averaging about 5,000 cubic yards of excavation and 15,000 cubic yards of embankment to the mile of road. Little rock is encountered.

The most important steel bridges are located at crossings of the White River at Clarendon, Ark., the Arkansas River at Rob Roy, Ark., the Ouachita River at Camden, Ark., and the Red River at Garland City, Ark. There are about 100 metal bridges and many timber trestles.

The depot buildings in large towns are generally of brick, and in the smaller towns of frame construction, as are most of the other buildings on the line. The principal shops are at Pine Bluff, Ark. At St. Louis, Mo., the carrier has recently constructed a large reinforced concrete freight station and warehouse.

Equipment.

The carrier and the St. Louis Southwestern Railway Company of Texas (all of whose stock is owned by the carrier) own equipment jointly in the respective proportions of 60 per cent and 40 per cent, as follows:

Locomotives	250
Freight-train cars	13,588
Passenger-train cars	225
Passenger-train cars with motor equipment	8

Construction Periods.

It is estimated that the lines of railroad owned or used by the carrier could be constructed in the period of time indicated below:

Line.	Months.
Owned and used:	
At East St. Louis, Ill., relay station	12
Altheimer, Ark., to Argenta (North Little Rock) Ark	12
Stuttgart, Ark., to Gillett, Ark	12
Delta, Mo., to Missouri-Arkansas state line	18
At St. Louis, Mo., Florida Street Terminal station	18
Malden, Mo., to Bird's Point, Mo	18
Lilbourn, Mo., to Madrid, Mo	18
Missouri-Arkansas state line to Paragould, Ark	18
Lewisville, Ark., to Arkansas-Louisiana state line	18
Arkansas-Louisiana state line to Shreveport, La	18
Paragould, Ark., to Texarkana, Arkansas-Texas state line	24
Jointly owned sidings	12
Owned but not used:	
McNeill, Ark., to Magnolia, Ark	12

Line.	Months.
Used but not owned:	
The Gray's Point	24
The Paragould	12
The Central	12

Engineering and General Expenditures.

Engineering has been allowed at 4¼ per cent on road accounts 3 to 47 inclusive.

General expenditures, exclusive of interest, have been allowed on the basis of 1½ per cent on road accounts 1 to 47, exclusive of account 2.

Interest during construction has been allowed for one-half the construction periods given above, plus three months, at the rate of 6 per cent per annum on all road and general expenditure accounts, excepting accounts 2 and 76. Interest on equipment has been allowed for three monhts at 6 per cent per annum.

General Information.

Shrinkage.—Ten per cent has been added to all embankment and ballast quantities for shrinkage.

Waste.—Quantities have been adjusted as follows for waste:

Track spikes	3	per cent.
Track bolts	1	" "
Nut locks	2	" "
Piling	12½	" "

Scrap and salvage.—Allowances have been made for scrap and salvage value.

59 *Summaries.*

Wholly Owned and Used.

All Sections.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	I. Road:		
1.	Engineering	$692,900	$692,900
3.	Grading	2,693,504	2,692,602
6.	Bridges, trestles, and culverts	2,593,720	1,914,962
8.	Ties	1,626,801	813,400
9.	Rails	2,690,746	2,190,720
10.	Other track material	631,903	338,073
11.	Ballast	1,275,381	1,101,853
12.	Track laying and surfacing	1,498,566	1,074,260
13.	Right-of-way fences	254,666	162,629
15.	Crossings and signs	78,679	57,120
16.	Station and office buildings	1,118,704	957,737

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
17.	Roadway buildings	114,613	87,360
18.	Water stations	196,214	165,775
19.	Fuel stations	50,047	39,905
20.	Shops and engine houses	718,156	588,154
23.	Wharves and docks	1,965	1,670
26.	Telegraph and telephone lines	78,085	64,075
27.	Signals and interlockers	13,893	11,420
29.	Power plant buildings	35,718	30,903
31.	Power transmission systems	3,078	2,584
32.	Power distribution systems	14,997	9,274
33.	Power line poles and fixtures	1,513	938
34.	Underground conduits	1,348	1,267
35.	Miscellaneous structures	165,165	134,596
36.	Paving	45,654	43,032
37.	Roadway machines	17,698	12,347
38.	Roadway small tools	29,646	14,822
44.	Shop machinery	287,508	206,608
45.	Power plant machinery	62,605	45,917
46.	Power substation apparatus	2,944	2,251
	Total, 1, and 3 to 47, inclusive	16,996,417	13,459,154
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	254,946	201,886
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	1,173,142	1,927,779
	Total, 71 to 77, inclusive	1,428,088	1,129,665
	Grand total, 1, and 3 to 77, inclusive	18,424,505	14,588,819
60	Wholly Owned and Used.		
	Not Allocated to States.		
	I. Road:		
1.	Engineering	$414	$414
16.	Station and office buildings	9,745	5,847
	Total, 1, and 3 to 47, inclusive	10,159	6,261

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing	152	94
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	773	477
	Total, 71 to 77, inclusive	925	571
	Grand total, 1, and 3 to 77, inclusive	11,084	6,832
	Wholly Owned and Used.		
	Located in Illinois.		
	I. Road:		
1.	Engineering	$260	$260
16.	Station and office buildings	6,125	5,430
	Total, 1, and 3 to 47, inclusive	6,385	5,690
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing	96	85
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	292	260
	Total, 71 to 77, inclusive	388	345
	Grand total, 1, and 3 to 77, inclusive	6,773	6,035

61 Wholly Owned and Used.

Located in Missouri.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	I. Road:		
1.	Engineering	$128,510	$128,510
3.	Grading	435,335	435,335
6.	Bridges, trestles, and culverts	284,682	181,830
8.	Ties	359,524	179,762
9.	Rails	476,035	430,971
10.	Other track material	119,377	79,052
11.	Ballast	349,663	294,815
12.	Track laying and surfacing	322,947	242,656
13.	Right-of-way fences	78,877	48,484
15.	Crossings and signs	13,743	9,078
16.	Station and office buildings	486,764	419,280
17.	Roadway buildings	25,994	19,413
18.	Water stations	24,875	20,469
19.	Fuel stations	10,961	7,673
20.	Shops and engine houses	1,648	1,265
23.	Wharves and docks	1,965	1,670
26.	Telegraph and telephone lines	14,671	11,667
27.	Signals and interlockers	1,261	1,200
36.	Paving	3,539	3,362
38.	Roadway small tools	5,769	2,884
44.	Shop machinery	6,113	4,529
	Total, 1, and 3 to 47, inclusive	3,152,253	2,523,905
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	47,284	37,859
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	191,972	153,705
	Total, 71 to 77, inclusive	239,256	191,564
	Grand total, 1, and 3 to 77, inclusive	3,391,509	2,715,469

Wholly Owned and Used.

Located in Arkansas.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	I. Road:		
1.	Engineering	$524,252	$524,252
62			
3.	Grading	1,991,994	1,991,092
6.	Bridges, trestles, and culverts	2,259,417	1,700,399
8.	Ties	1,176,702	588,349
9.	Rails	2,034,560	1,604,032
10.	Other track material	471,468	233,442
11.	Balast	858,701	747,892
12.	Track laying and surfacing	1,081,256	760,541
13.	Right-of-way fences	161,828	102,187
15.	Crossings and signs	60,198	44,402
16.	Station and office buildings	570,493	494,374
17.	Roadway buildings	81,445	62,591
18.	Water stations	163,856	138,796
19.	Fuel stations	39,086	32,232
20.	Shops and engine houses	695,425	570,944
26.	Telegraph and telephone lines	62,600	51,675
27.	Signals and interlockers	7,216	5,777
29.	Power plant buildings	35,718	30,903
31.	Power transmission systems	3,078	2,584
32.	Power distribution systems	14,997	9,274
33.	Power line poles and fixtures	1,513	938
34.	Underground conduits	1,348	1,267
35.	Miscellaneous structures	165,165	134,596
36.	Paving	12,227	9,782
37.	Roadway machines	17,698	12,347
38.	Roadway small tools	22,004	11,002
44.	Shop machinery	279,801	200,936
45.	Power plant machinery	62,605	45,917
46.	Power substation apparatus	2,944	2,251
	Total, 1, and 3 to 47, inclusive	12,859,595	10,114,774

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	192,894	151,721
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	921,152	724,099
	Total, 71 to 77, inclusive	1,114.046	875,820
	Grand total, 1, and 3 to 77, inclusive	13,973,641	10,990,594
	Wholly Owned and Used.		
	Located in Louisiana.		
	I. Road:		
1.	Engineering	$39,464	$39,464
3.	Grading	266,175	266,175
6.	Bridges, trestles, and culverts	49,621	32,733
8.	Ties	90,575	45,289
9.	Rails	180,151	155,717
10.	Other track material	41,058	25,579
11.	Ballast	67,017	59,146
12.	Track laying and surfacing	94,363	71,063
13.	Right-of-way fences	13,961	11,958
15.	Crossings and signs	4,738	3,640
16.	Station and office buildings	45,577	32,806
17.	Roadway buildings	7,174	5,356
18.	Water stations	7,483	6,510
20.	Shops and engine houses	21,083	15,945
26.	Telegraph and telephone lines	814	733
27.	Signals and interlockers	5,416	4,443
36.	Paving	29,888	29,888
38.	Roadway small tools	1,873	936
44.	Shop machinery	1,594	1,143
	Total, 1, and 3 to 47, inclusive	968,025	808,524

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General Expenditures:		
71. 72. 73. 74. 75. 77.	Organization expenses, General officers and clerks, Law, Stationery and printing, Taxes, Other expenditures—general	14,520	12,127
76.	Interest during construction	58,953	49,238
	Total, 71 to 77, inclusive	73,473	61,365
	Grand total, 1, and 3 to 77, inclusive	1,041,498	869,889
64	Jointly Owned and Used with St. Louis Transfer Railway Company, Each One-Half: Carrier's Portion.		
	Located in Missouri.		
	I. Road:		
1.	Engineering	$11	$11
8.	Ties	80	40
9.	Rails	49	47
10.	Other track material	82	48
12.	Track laying and surfacing	49	31
	Total, 1, and 3 to 47, inclusive	271	177
	III. General Expenditures:		
71. 72. 73. 74. 75. 77.	Organization expenses, General officers and clerks, Law, Stationery and printing, Taxes, Other expenditures—general	4	3
76.	Interest during construction	12	8
	Total, 71 to 77, inclusive	16	11
	Grand total, 1, and 3 to 77, inclusive	287	188

Jointly Owned and Used with Kansas City, Fort Scott and Memphis Railway Company, Each One-half: Carrier's Portion.

Located in Arkansas.

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
	I. Road:		
1.	Engineering	$51	$51
8.	Ties	262	130
9.	Rails	356	307
16.	Other track material	191	118
11.	Ballast	97	97
12.	Track-laying and surfacing	301	217
	Total, 1, and 3 to 47, inclusive	1,258	920
65	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	19	14
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	57	42
	Total, 71 to 77, inclusive	76	56
	Grand total, 1, and 3 to 77, inclusive	1,334	976

Jointly Owned and Used with Missouri Pacific Railroad Company Each One-half: Carrier's Portion.

Located in Arkansas.

(At Pine Bluff.)

	I. Road:		
1.	Engineering	$165	$16
3.	Grading	316	31
8.	Ties	752	37
9.	Rails	1,339	1,14
10.	Other track material	363	24
11.	Ballast	298	29
12.	Track laying and surfacing	823	61
	Total, 1, and 3 to 47, inclusive	4,056	3,16

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General Expenditures:		
71. 72. 73. 74. 75. 77.	Organization expenses, General officers and clerks, Law, Stationery and printing, Taxes, Other expenditures—general	61	47
76.	Interest during construction	185	144
	Total, 71 to 77, inclusive	246	191
	Grand total, 1, and 3 to 77, inclusive	4,302	3,353
66	Jointly Owned and Used with Missouri Pacific Railroad Company, Each One-Half: Carrier's Portion.		
	Located in Arkansas.		
	(At Texarkana.)		
	I. Road:		
1.	Engineering	$55	$55
8.	Ties	257	129
9.	Rails	303	252
10.	Other track material	213	126
11.	Ballast	202	177
12.	Track laying and surfacing	311	217
15.	Crossings and signs	11	7
	Total, 1, and 3 to 47, inclusive	1,352	963
	III. General Expenditures:		
71. 72. 73. 74. 75. 77.	Organization expenses, General officers and clerks, Law, Stationery and printing, Taxes, Other expenditures—general	20	14
76.	Interest during construction	62	44
	Total, 71 to 77, inclusive	82	58
	Grand total, 1, and 3 to 77, inclusive	1,434	1,021

Jointly Owned and Used with Choctaw, Oklahoma and Gulf Railroad Comapny, Each One-Half: Carrier's Portion.

Located in Arkansas.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation
	I. Road:		
1.	Engineering	$47	$47
3.	Grading	37	37
8.	Ties	321	298
9.	Rails	388	382
10.	Other track material	171	121
11.	Ballast	7	3
12.	Track laying and surfacing	186	169
15.	Crossings and signs	1	1
67	Total, 1, and 3 to 47, inclusive	1,158	1,058
	General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	17	16
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	53	48
	Total, 71 to 77, inclusive	70	64
	Grand total, 1, and 3 to 77, inclusive	1,228	1,122

Jointly Owned and Used with Louisiana & Arkansas Railway Company and Louisiana Railway & Navigation Company, Each One-Third: Carrier's Portion.

Located in Louisiana.

	I. Road:		
1.	Engineering	$56	$56
8.	Ties	390	195
9.	Rails	467	397
10.	Other track material	187	128
12.	Track laying and surfacing	264	182
15.	Crossings and signs	1	1
	Total, 1, and 3 to 47, inclusive	1,365	959

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	20	14
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	62	44
	Total, 71 to 77, inclusive	82	58
	Grand total, 1, and 3 to 77, inclusive	1,447	1,017

68 Jointly Owned and Used with St. Louis Southwestern Railway Company of Texas, 40 Per Cent; the Carrier, 60 Per Cent: Carrier's Portion.

Not Allocated to States.

1.	Engineering	$594	$594
37.	Roadway machines	13,974	10,809
	Total 1, and 3 to 47, inclusive	14,568	11,403
	II. Equipment:		
51.	Steam locomotives	2,165,107	1,534,898
53.	Freight-train cars	6,165,333	4,318,466
54.	Passenger-train cars	1,159,542	875,888
57.	Work equipment	532,322	389,293
	Total 51 to 58, inclusive	10,022,304	7,118,545

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing	218	171
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	151,000	107,299
	Total, 71 to 77, inclusive	151,218	107,470
	Grand total, 1 and 3 to 77, inclusive	10,188,090	7,237,418

Wholly Owned but Leased to the Louisiana North West Railroad Company.

Located in Arkansas.

	I. Road:		
1.	Engineering	$3,234	$3,234
3.	Grading	22,086	22,086
6.	Bridges, trestles, and culverts	6,694	3,668
8.	Ties	12,775	6,387
9.	Rails	17,201	11,888
10.	Other track material	3,916	2,233
11.	Ballast	285	28
69			
12.	Track laying and surfacing	8,944	5,44
13.	Right-of-way fences	282	10
15.	Crossings and signs	579	49
16.	Station and office buildings	3,338	2,97
	Total, 1, and 3 to 47, inclusive	79,334	58,80

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	1,190	882
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	3,624	2,686
	Total, 71 to 77, inclusive	4,814	3,568
	Grand total, 1, and 3 to 77, inclusive	84,148	62,370
	Used but Not Owned.		
	Leased from the Gray's Point, Owner.		
	Located in Missouri.		
	I. Road:		
1.	Engineering	$47,439	$47,439
3.	Grading	142,417	142,065
6.	Bridges, trestles, and culverts	59,995	41,239
8.	Ties	116,154	58,077
9.	Rails	165,145	151,018
10.	Other track material	55,698	35,946
11.	Ballast	184,754	158,171
12.	Track laying and surfacing	142,477	110,334
13.	Right-of-way fences	8,417	6,344
15.	Crossings and signs	2,348	1,626
16.	Station and office buildings	37,066	31,549
17.	Roadway buildings	6,718	4,918
18.	Water stations	72,263	66,336
19.	Fuel stations	12,187	9,749
20.	Shops and engine houses	80,906	69,076
26.	Telegraph and telephone lines	4,660	3,791
27.	Signals and interlockers	2,974	2,323
31.	Power transmission systems	947	642
32.	Power distribution systems	3,254	1,705
33.	Power line poles and fixtures	924	462
38.	Roadway small tools	995	497
44.	Shop machinery	15,902	10,093
	Total, 1, and 3 to 47, inclusive	1,163,640	953,400

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
70	III. General Expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	17,454	14,302
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general	88,582	72,578
76.	Interest during construction		
	Total, 71 to 77, inclusive	106,036	86,880
	Grand total, 1, and 3 to 77, inclusive	1,269,676	1,040,280

Used but Not Owned.

Leased from the Paragould, Owner.

All Sections.

	I. Road:		
1.	Engineering	$20,217	$20,217
3.	Grading	88,988	88,988
6.	Bridges, trestles and culverts	91,083	49,893
8.	Ties	68,559	34,280
9.	Rails	91,576	61,861
10.	Other track material	19,289	10,857
11.	Ballast	7,543	6,945
12.	Track laying and surfacing	48,712	29,813
13.	Right-of-way fences	11,496	6,708
15.	Crossings and signs	3,204	2,176
16.	Station and office buildings	23,037	18,102
17.	Roadway buildings	7,259	5,292
18.	Water stations	9,291	6,832
19.	Fuel stations	735	588
20.	Shops and engine houses	3,168	1,267
27.	Signals and interlockers	60	42
38.	Roadway small tools	1,693	847
	Total, 1, and 3 to 47, inclusive	495,910	344,708

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
	III. General expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing	7,439	5,170
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	22,651	15,745
	Total, 71 to 77, inclusive	30,090	20,915
71	Grand total, 1, and 3 to 77, inclusive	526,000	365,623

Used but Not Owned.

Leased from the Paragould, Owner.

Located in Missouri.

	I. Road:		
1.	Engineering	$11,737	$11,737
3.	Grading	56,612	56,612
6.	Bridges, trestles and culverts	65,854	35,280
8.	Ties	38,570	19,287
9.	Rails	47,473	32,579
10.	Other track material	9,189	5,269
11.	Ballast	6,384	5,810
12.	Track laying and surfacing	26,448	16,513
13.	Right-of-way fences	6,606	4,178
15.	Crossings and signs	1,223	925
16.	Station and office buildings	8,938	6,733
17.	Roadway buildings	3,641	2,797
18.	Water stations	4,203	2,915
27.	Signals and interlockers	48	34
38.	Roadway small tools	965	483
	Total, 1, and 3 to 47, inclusive	287,891	201,152

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	4,319	3,017
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	13,150	9,188
	Total, 71 to 77, inclusive	17,469	12,205
	Grand total, 1, and 3 to 77, inclusive	305,360	213,357

72

Used but Not Owned.

Leased from the Paragould, Owner.

Located in Arkansas.

	I. Road:		
1.	Engineering	$8,480	$8,480
3.	Grading	32,376	32,376
6.	Bridges, trestles and culverts	25,229	14,613
8.	Ties	29,989	14,993
9.	Rails	44,103	29,282
10.	Other track material	10,100	5,588
11.	Ballast	1,159	1,135
12.	Track laying and surfacing	22,264	13,300
13.	Right-of-way fences	4,890	2,530
15.	Crossings and signs	1,981	1,251
16.	Station and office buildings	14,099	11,369
17.	Roadway buildings	3,618	2,495
18.	Water stations	5,088	3,917
19.	Fuel stations	735	588
20.	Shops and engine houses	3,168	1,267
27.	Signals and interlockers	12	8
38.	Roadway small tools	728	364
	Total, 1, and 3 to 47, inclusive	208,019	143,556

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General expenditures:		
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	3,120	2,153
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures—general		
76.	Interest during construction	9,501	6,557
	Total, 71 to 77, inclusive	12,621	8,710
	Grand total, 1, and 3 to 77, inclusive	220,640	152,266

73 Used but Not Owned.

Leased from the Central Owner.

Located in Arkansas.

	I. Road:		
1.	Engineering	$26,185	$26,185
3.	Grading	110,548	110,548
6.	Bridges, trestles and culverts	40,678	22,023
8.	Ties	85,281	42,641
9.	Rails	114,519	85,630
10.	Other track material	28,081	17,323
11.	Ballast	101,900	84,722
12.	Track laying and surfacing	86,008	59,775
13.	Right-of-way fences	13,260	10,490
15.	Crossings and signs	4,822	3,907
16.	Station and office buildings	11,418	9,269
17.	Roadway buildings	12,247	10,160
18.	Water stations	5,336	4,678
27.	Signals and interlockers	36	25
38.	Roadway small tools	1,990	995
	Total, 1, and 3 to 47, inclusive	642,309	488,371

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
	III. General expenditures:		
71.	Organization expenses.....		
72.	General officers and clerks.....		
73.	Law		
74.	Stationery and printing.....	9,635	7,326
75.	Taxes		
77.	Other expenditures—general.....		
76.	Interest during construction.....	29,337	22,306
	Total, 71 to 77, inclusive..	38,972	29,632
	Grand total, 1, and 3 to 77, inclusive	681,281	518,003

74 APPENDIX 2.

The conclusions concerning the various matters which have been reported upon in connection with the carrier, the Gray's Point, the Paragould, and the Central, are given in the text of the report. In this appendix are given supplementary facts concerning the above carriers and their predecessors.

The Carrier.

Introductory.

In addition to the properties owned or used by the carrier, it controls through ownership of the entire capital stock the five following named companies, each of which is operated as a separate entity:

St. Louis Southwestern Railway Company of Texas,
The Pine Bluff Arkansas River Railway,
Eastern Texas Railroad Company,
Dallas Terminal Railway & Union Depot Company,
The Shreveport Bridge & Terminal Company.

The property of the Stephenville North & South Texas Railway Company, which corporation is controlled by the carrier through ownership of all the stock, is leased to and operated exclusively by the St. Louis Southwestern Railway Company of Texas.

As hereinbefore stated, the carrier controls through ownership of entire capital stock, and exclusively operates, the properties of the Gray's Point, the Paragould, and the Central.

The railroad of the carrier, therefore, makes but a small part of the railroad system of which it forms the base and which is popularly known as the Cotton Belt. The ten railroads hereinbefore named, making up this system, are in economic interest, and in operation, one piece of property, operated economically (but not legally) as a

unit, and in the economic interest of one group of owners. The carrier as a corporation owns all the capital stock, and all except $4,458,000 of the funded debt of the nine other corporations which together with it make up this system.

This enables the property while held in fee by different legal entities to be operated substantially as if it all belonged to a single corporation.

Corporate History.

As hereinbefore stated, the carrier was chartered January 16, 1891, to take over the property of the Arkansas, which it acquired at foreclosure sale through Louis Fitzgerald, purchasing trustee, on February 9, 1891. The purchasing trustee also acquired, on February 5, 1891, the property, rights, and franchises of the St. Louis, Arkansas and Texas Railway Company in Texas, hereinafter called the St. Louis & Texas, at foreclosure sale. Under the joint reorganization plan and agreement of the stock and bond holders of the two companies, dated December 16, 1889, three new companies were
75 incorporated, namely, the carrier, the St. Louis Southwestern Railway Company of Texas, hereinafter called the Southwestern of Texas, and the Tyler Southeastern Railway Company, hereinafter called the Tyler Southeastern.

The corporations whose properties, rights and franchises have gone to make up the carrier and the dates of the changes in those several corporations are shown in the following table:

Name of corporation.	Incorporated. Date.	Incorporated. State.	Date and character of change in corporation.
St. Louis Southwestern Railway Company.	January 16, 1891.	Missouri ..	Present company.
The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (#2).	August 18, 1887.	Missouri and Arkansas.	Sold at foreclosure—deeded to St. Louis Southwestern Railway Company by purchasing trustee on February 9, 1891.
The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (#1).	April 15, 1886..	Missouri ..	Consolidated with The Arkansas & Southern Railway Company on August 18, 1887, to form The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (#2).
The Texas and St. Louis Railway Company in Missouri and Arkansas.	November 29, 1881.	Missouri and Arkansas.	Sold at foreclosure—deeded to the St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (#1) by bondholders' committee on May 14, 1886.

Name of corporation.	Incorporated. Date.	State.	Date and character of change in corporation.
Texas & St. Louis Railway Company of Arkansas.	May 21, 1881....	Arkansas ..	Consolidated with Little River Valley and Arkansas Railroad Company on November 29, 1881, to form The Texas and St. Louis Railway Company in Missouri and Arkansas.
Little River Valley and Arkansas Railroad Company.	September 7, 1876.	Missouri ..	Consolidated with Texas and St. Louis Railway Company of Arkansas on November 29, 1881, to form The Texas and St. Louis Railway Company in Missouri and Arkansas.
76			
New Madrid and West Prairie Road Company.	February 22, 1855.	Missouri ..	Sold September 7, 1876, to Little River Valley and Arkansas Railroad Company.
The Arkansas & Southern Railway Company.	February 17, 1887.	Arkansas .	Consolidated with The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (21) on August 18, 1887, to form The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (22).
The Shreveport and Arkansas Railway Company.	May 18, 1887....	Louisiana .	Sold August 13, 1887, to The Arkansas & Southern Railway Company.
The Little Rock & Eastern Railway Company.	February 17, 1887.	Arkansas ..	Sold August 15, 1887, to The Arkansas & Southern Railway Company.
The St. Louis, Arkansas and Texas Terminal Railway Company.	May 1, 1888.....	Missouri ..	Sold August 15, 1888, to The St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri (22).
Stuttgart and Arkansas River Railroad Company.	November 21, 1881.	Arkansas ..	Sold January 3, 1901, to St. Louis Southwestern Railway Company.

Development of Fixed Physical Property.

The purchasing trustee deeded the property of the Arkansas to the carrier; the property of the St. Louis and Texas (except the Lufkin branch) to the Southwestern of Texas; and the Lufkin branch to the Tyler Southeastern.

The owned mileage of the carrier was acquired as follows:

	Approximate miles.
In reorganization (1891):	
Property of the Arkansas:	
Bird's Point, Mo., to Texarkana, Ark.-Tex. state line	417
Branches	165
By purchase (1901):	
Property of the Stuttgart & Arkansas River Railroad Company:	
Stuttgart, Ark., to Gillett, Ark	35
77 By construction:	
Extension to Little Rock Branch	3
Extension to Shreveport Branch	2
Total	622

History of Capital Financing.

Securities of predecessor companies.—The following securities of the Arkansas and the St. Louis & Texas were outstanding at the time of reorganization:

	The Arkansas.	The St. Louis & Texas.	Total.
Capital stock	$14,773,000.00	$16,358,500.00	$31,131,500.00
First mortgage 6 per cent bond certificates	7,797,400.00	8,611,600.00	16,409,000.00
Second mortgage 6 per cent bond certificates	7,797,400.00	8,611,600.00	16,409,000.00
Equipment notes	1,766,574.28	.....	1,766,574.28
Receivers' certificates	287,668.41	545,000.00	832,668.41
	32,422,042.69	34,126,700.00	66,548,742.69
Less stock of the Arkansas held by the St. Louis & Texas			7,771,000.00
Total held by the public			58,777,742.69

First mortgage 6 per cent bonds of the Arkansas and the St. Louis & Texas, in the amounts of $7,797,400 and $8,611,600, respectively, had been deposited with the Central Trust Company of New York as collateral security for an issue of $16,409,000 of joint first mortgage 6 per cent bond certificates, which were outstanding.

Second mortgage 6 per cent bonds of the Arkansas and the St. Louis & Texas, in the amounts of $7,797,400 and $8,611,600, respectively, had been deposited with the Mercantile Trust Company of New York as collateral security for an issue of $16,409,000 joint second mortgage 6 per cent bond certificates, which were outstanding.

Change in amount of securities due to reorganization.—The carrier issued securities to the reorganization committee of the par value, after deducting for securities returned, of $63,717,082.50, and assumed equipment obligations of $577,497.19, a total of $64,294,579.69, as follows:

Common stock	$16,356,100.00
Preferred stock	19,893,650.00
First mortgage bond certificates	19,498,560.00
Second mortgage bond certificates	7,968,772.50
Equipment obligations assumed	577,497.19
	64,294,579.69

78 In the reorganization there was, therefore, an increase of $5,516,837, in the amount of securities issued over those of the St. Louis & Texas and the Arkansas outstanding prior thereto.

The increase or decrease in the various classes was as follows:

	Increase.	Decrease.
Capital stock	$12,889,250.00	
First mortgage bond certificates	3,089,560.00	
Second mortgage bond certificates	.....	$8,440,227.50
Equipment obligations	.....	1,189,077.09
Receivers' certificates	.....	832,668.41
Totals	15,978,810.00	10,461,973.00
Net increase		5,516,837.00

Syndicating, Banking, and Other Financial Arrangements.—The carrier owns the capital stock and the first and second mortgage income bonds of both the Southwestern of Texas and the Tyler Southeastern.

The capital stock and first mortgage bonds of the Southwestern of Texas and the Tyler Southeastern, together with the first mortgage bonds of the carrier, were deposited with the Central Trust Company of New York, trustee, as collateral security for an issue of $20,000,000 of first mortgage 4 per cent gold bond certificates of the carrier, dated February 12, 1891, all of which were turned over to the reorganization committee.

The second mortgage income bonds of the Southwestern of Texas and the Tyler Southeastern, together with the second mortgage income bonds of the carrier, were deposited with the Mercantile Trust Company of New York, trustee, as collateral security for an issue of $10,000,000 of second mortgage 4 per cent gold income bond certificates of the carrier, dated February 12, 1891. $8,000,000 of these certificates were turned over to the reorganization committee and $2,000,000 reserved for additions and betterments.

The securities of the carrier received by the reorganization committee were:

Common stock	$16,500,000
Preferred stock	20,000,000
First Mortgage bond certificates	20,000,000
Second mortgage income bond certificates	8,000,000
	64,500,000

These securities were disposed of by the reorganization committee as follows:

79 Common stock:

Given to holders of the St. Louis & Texas capital stock, share for share	$16,214,600
Returned to the carrier	143,900
Unaccounted for	141,500
	16,500,000

Preferred stock:

Given to holders of joint second mortgage 6 per cent bond certificates	16,312,250
Given to holders of joint first mortgage 6 per cent bond certificates	3,272,200
Returned to the carrier	106,350
Unaccounted for	309,200
	20,000,000

First mortgage 4 per cent bond certificates:

Given to holders of joint first mortgage 6 per cent bond certificate-	16,899,830
Sold	2,598,000
Returned to carrier	501,440
Unaccounted for	730
	20,000,000

Second mortgage 4 per cent income bond certificates:

Given to holders of joint first mortgage 6 per cent bond certificates	4,090,250.00
Given to payers of assessment on joint second mortgage 6 per cent bond certificates	815,612.50
Given to payers of assessment on St. Louis & Texas common stock	1,621,460.00
Sold	1,441,000.00
Returned to carrier	31,227.50
Unaccounted for	450.00
	8,000,000.00

The capital stock of the Arkansas did not participate in the reorganization.

The cash receipts and disbursements of the reorganization committee were as follows:

Receipts:	
Sale of first mortgage 4 per cent bond certificates (par $2,598,000)	$2,423,112.50
Sale of second mortgage 4 per cent bond certificates (par $1,441,000)	
Assessment on St. Louis & Texas capital stock .	1,378,141.00
Assessment on j in second mortgage 6 per cent bond certificates	570,828.75
Interest on deposits, etc.	51,345.00
Total	4,423,427.25
Disbursements:	
Paid to syndicate for guaranty	100,975.00
Car trust certificates retired	11,026,323.94
80 Deposited with court, account purchase of properties	274,861.80
Receiver's certificates retired, including interest	828,380.40
Bond interest paid to May, 1891	1,470,766.80
Sundry disbursements, account reorganization	497,119.31
Cash turned over to the carrier	225,000.00
Total	4,423,427.25

Following the reorganization of the property, cash and securities were received from the reorganization committee, and certain liabilities were assumed, as follows:

Assets:	
Cash	$225,000.00
First mortgage certificates	501,440.00
Second mortgage certificates	31,227.50
Common stock	143,900.00
Preferred stock	106,350.00
United States court deposits	36,366.07
Total	1,044,283.57
Liabilities:	
Expenses of reorganization committee	8,075.58
Current liabilities of Arkansas assumed in excess of current assets	97,459.51
Settlement of receiver's losses	21,586.80
Loss on sale of steel rail by receiver	7,567.44
Total	134,689.33
Net assets	909,594.24

This net amount was divided among the three companies and aken into account as follows:

	Income.	Profit and loss.	Accrued interest prior to June, 1891.	Total.
The carrier	$252,726.72	$110,833.34	$24,740.00	$388,300.06
Southwestern of Texas	330,039.52	133,593.64	23,610.00	487,243.16
Tyler Southeastern	23,064.74	9,336.28	1,650.00	34,051.02
	605,830.98	253,763.26	50,000.00	909,594.24

The reorganization committee retired all but $577,497.19 of the outstanding equipment notes of the Arkansas. The carrier assumed $288,748.60 of the unpaid notes and the Southwestern of Texas the remainder, $288,748.59.

81 In addition to the funded debt issued to the reorganization committee, the carrier has issued the following:

Second mortgage 4 per cent income bond certificates	$2,000,000.00
First consolidated mortgage 4 per cent bonds	22,261,750.00
First terminal and unifying 5 per cent mortgage bonds	11,446,000.00
Equipment trust obligations	13,011,723.76
Total	48,719,473.76

$3,291,000 of the first terminal and unifying 5 per cent bonds were held by the carrier and the remainder of the $48,719,473.76, together with the $501,440 first mortgage and the $31,227.50 second mortgage bond certificates, returned by the reorganization committee, a total of $45,961,141.26, disposed of for the following considerations:

Second mortgage 4 per cent income bond certificates	$6,739,500.00
First mortgage bonds—The Pine Bluff Arkansas River Railway	62,500.00
Capital stock—Eastern Texas Railroad Company	454,500.00
Equipment	7,406,295.93
Charged to Southwestern of Texas	27,937.89
Interest on extended equipment obligations	5,885.42
Interest included in equipment obligations	596,218.52
Cash	25,442,413.59
Total	40,735,251.35
Net discount	55,225,889.91
	45,961,141.26

Securities of the carrier sold for cash were disposed of as follows:

Security.	Par value.	Cash.	Discounts.
4 per cent First mortgage certificates:			
Various	$501,440.00	$354,761.65	$146,678.35
4 per cent Second mortgage certificates:			
Various	2,031,227.50	1,262,587.70	768,639.80
First consolidated mortgage 4 per cent bonds:			
Kuhn, Loeb & Company syndicate	6,000,000.00	4,760,000.00	1,240,000.00
Kuhn, Loeb & Company	3,481,000.00	2,686,480.00	794,520.00
Various	6,046,700.00	4,699,770.00	1,346,930.00
First terminal and unifying mortgage 5 per cent bonds:			
82 Guaranty Trust Company of New York	8,155,000.00	6,809,425.00	1,345,575.00
Equipment trust gold notes:			
St. Louis Trust Company	63,832.20	54,097.79	9,734.41
John H. Watkins	460,000.00	451,260.00	8,740.00
Wm. Saloman & Company	1,760,000.00	1,730,591.25	29,408.75
U. S. Trust Company of New York	340,000.00	326,737.85	13,262.15
Guaranty Trust Company of New York	1,700,000.00	1,671,057.50	28,942.50
Wm. A. Read and Company.	660,000.00	635,644.85	24,355.15
Total	31,199,199.70	25,442,413.59	5,756,786.11

During the period from 1891 to the date of valuation, the carrier borrowed $7,376,980 in cash on its promissory notes, as follows:

The National Bank of Commerce in St. Louis	$2,300,000
The Commercial Bank of St. Louis	1,250,000
The State National Bank of St. Louis	950,000
The Third National Bank of St. Louis	355,000
Commonwealth Trust Company of St. Louis	100,000
The St. Louis National Bank	90,000
Bowling Green Trust Company, New York	450,000
Equitable Trust Company of New York	500,000
National Bank of Commerce and Trust Company, Memphis, Tenn.	117,980
Jay Gould	310,000
Estate of Jay Gould	600,000
Edwin Gould	354,000
Total	7,376,980

Interest varying from 4½ per cent to 7 per cent per annum was paid on these notes.

Capital stock.—Common stock is authorized to the amount of $110,000,000, par value $100 per share. The total amount outstanding on date of valuation, $16,500,000, was issued to the reorganization committee, as hereinbefore explained.

Preferred stock is authorized to the amount of $20,000,000, par value $100 per share, and the entire amount was issued to the reorganization committee, as hereinbefore described, and is still outstanding.

Funded debt.—The funded debt issued, assumed, and retired by the carrier is summarized as follows:

83 Issued:

First mortgage 4 per cent gold bonds	$9,895,000.00
First mortgage 4 per cent gold bond certificates	20,000,000.00
Second mortgage 4 per cent gold income bonds	4,947,500.00
Second mortgage 4 per cent gold income bond certificates	10,000,000.00
First consolidated mortgage 4 per cent bonds	22,261,750.00
First terminal and unifying mortgage 5 per cent bonds	11,446,000.00
Equipment trust obligations	13,011,723.76
Total	91,561,973.76

Assumed:

Equipment notes of the Arkansas	288,748.60
Grand total (issued and assumed)	91,850,722.36

Retired:

Equipment trust obligations	4,739,468.84
Equipment notes of the Arkansas	284,170.32
Total	5,023,639.16
Total outstanding	86,827,083.20

The details of each of the above issue of funded debt are separately stated below:

The $9,895,000 par value of first mortgage 4 per cent gold bonds, under mortgage dated February 12, 1891, due November 1, 1989, were issued for the property of the Arkansas. The entire issue is outstanding and held by the carrier.

The $20,000,000 par value of first mortgage 4 per cent gold bond certificates, dated February 12, 1891, due November 1, 1989, were issued to the reorganization committee for first mortgage 4 per cent gold bonds, as follows:

The carrier	$9,895,000.00
Southwestern of Texas	9,445,000.00
Tyler Southeastern	660,000.00
	20,000,000.00
The reorganization committee returned	501,440.00
	19,498,560.00
Cash realized on certificate sold amounted to	354,761.65
	19,853,321.65
Discount suffered amounted to	146,678.35
	20,000,000.00

This entire issue is outstanding in the hands of the public.

The $4,947,500 par value of second mortgage 4 per cent gold income bonds, under mortgage dated February 12, 1891, due November 1, 1989, were issued for the property of the Arkansas. The entire issue is outstanding and held by the carrier.

The $10,000,000 par value of second mortgage 4 per cent gold income bond certificates, dated February 12, 1891, due November 1, 1989, were issued to the reorganization committee for second mortgage 4 per cent gold income bonds, as follows:

The carrier	$4,947,500.00	
Southwestern of Texas	4,722,500.00	
Tyler Southeastern	330,000.00	
	10,000,000.00	
Less amount reserved for additions and betterments	2,000,000.00	
Returned by reorganization committee	31,227.50	2,031,227.50
		7,968,772.50
Cash realized on certificates sold amounted to		1,262,587.70
		9,231,360.20
Discount suffered amounted to		768,639.80
		10,000,000.00

This entire issue is outstanding, $3,042,500 being in the hands of the public, and the remainder, $6,957,500, is held by the carrier.

$25,000,000 first consolidated 4 per cent mortgage bonds, dated June 1, 1902, due June 1, 1932, were authorized, and $22,261,750 par value issued. Of these, $15,527,700 par value were sold for $12,146,250 cash; $6,065,550 par value, were issued for $6,739,500 par value second mortgage certificates of the carrier; $62,500 par value were exchanged for $50,000 par value of the capital stock of The Pine Bluff Arkansas River Railway; and $606,000, par value, were issued

for $454,500 par value of the capital stock of the Eastern Texas Railroad Company.

Counting the securities received for this issue at par, the net discount on the issue was $2,859,000.

The entire issue is outstanding in the hands of the public.

$100,000,000 first terminal and unifying mortgage 5 per cent bonds, under mortgage dated January 1, 1912, due January 1, 1952, were authorized, and $11,446,000 par value issued, as follows:

$8,155,000 par value were issued for:

Cash	$6,809,425
Discount	1,345,575
$3,291,000 par value were issued for treasury bonds	3,291,000
	11,446,000

This entire issue is outstanding, $8,155,000 being in the hands of the public, and the remainder, $3,291,000, is held by the carrier.

In addition to the above described long-term securities, the carrier has issued or assumed 48 separate issues of equipment notes or equipment trust obligations, usually running for five years and maturing serially. The four latest, beginning with the issue under agreement dated January 20, 1911, mature semi-annually. The total par value of these securities is $13,300,472.36 and of this total $5,023,639.16 have been retired, leaving outstanding $8,276,833.20.

All these securities that were issued before April 1, 1909, are
85 held by the carrier. Since 1909, six issues have been put out with a total par value of $5,260,000, and of this sum $2,530,000 have been retired for cash, leaving $2,730,000 outstanding in the hands of the public.

Of the total indebtedness there has been retired a tota lof $5,023,639.16, namely:

For cash	$4,732,454.68
Unaccrued interest	291,184.48
Total retired	5,023,639.16

This leaves outstanding:

In hands of public	56,189,250.00
In hands of carrier	30,637,833.20
Total outstanding	86,827,083.20

The total discount of $5,225,889.91 on all of the securities issued was charged as follows:

Investment in road and equipment	$1,985,210.00
Profit and loss	2,958,806.18
Income account	6,828.76
Book value of Eastern Texas Railroad Company capital stock	151,500.00
Charged to Texas lines	123,544.97
	5,225,889.91

Of the total securities held by the carrier amounting to $30,637,833.20, $3,291,000 were never actually issued, and the following were reacquired:

Carrier's first mortgage gold bonds	$9,895,000.00
Carrier's second mortgage gold income bonds	44,947,500.00
Carrier's second mortgage certificates	6,957,500.00
Equipment trust notes	5,546,833.20
	27,346,833.20

The following summary shows consideration received for all the bonds and equipment obligations issued or assumed:

Property of Arkansas			$15,131,248.60
Issued to reorganization committee for:			
First mortgage gold bonds—			
The carrier	$9,895,000.00		
Southwestern of Texas	9,445,000.00		
Tyler Southeastern	660,000.00		
Second mortgage gold income bonds:—			
The carrier	4,947,500.00		
Southwestern of Texas	4,722,500.00		
Tyler Southeastern	330,000.00		
	30,000,000.00		
86 Less:			
Certificates held for betterments	$2,000,000.00		
Certificates returned by reorganization committee	532,667.50	2,532,667.50	
			27,467,332.50
Carrier's second mortgage certificates			6,739,500.00
Bonds of the Pine Bluff Arkansas River Railway			62,500.00
Capital stock of Eastern Texas Railroad Company			454,500.00
Equipment			7,406,295.93
Interest included in face of equipment notes			596,218.52
Charged to Southwestern of Texas			27,937.89
Interest on extended equipment notes			5,885.42
Cash			25,442,413.59
			83,333,832.45
Net discount			5,225,889.91
Treasury bonds			3,291,000.00
			91,850,722.36

Short-term notes.—The considerations received for the short-term notes, excluding renewals, issued by the carrier, were as follows:

Cash	$7,376,980.00
Materials and supplies	935,122.06
Depot ground, Pine Bluff, Ark	8,000.00
One-half interest in steamer Merriam	14,000.00
Capital stock of Texas and Louisiana Railroad Company	262,500.00
	8,596,602.06
Discount	3,520.00
Total	8,600,122.06

The notes outstanding on valuation date, aggregating $1,621,919.96, were held as follows:

Edwin Gould (3 notes)	$185,000.00
Equitable Trust Company of New York	500,000.00
National Bank of Commerce, St. Louis	700,000.00
State National Bank, St. Louis	200,000.00
National Lumber and Creosote Company	36,919.96
	1,621,919.96

Securities of other companies guaranteed.—The carrier has guaranteed the payment of principal and interest of the following securities issued by other companies which are regarded as contingent liabilities:

87	The Gray's Point—mortgage bonds	$1,338,000
	The Central—first mortgage bonds	1,085,000
	The Shreveport Bridge & Terminal Company—first mortgage bonds	450,000
	Memphis Union Station Company—first mortgage bonds	2,500,000*
	Stephenville North & South Texas Railway Company—first mortgage bonds	2,607,000
	The Paragould—first and refunding mortgage bonds	511,000
	Arkansas and Memphis Railway Bridge and Terminal Company—first mortgage bonds	6,000,000*

Interest and sinking fund installments on general mortgage bonds of the Terminal Railroad Association of St. Louis are also guaranteed by the carrier to the extent of one-fifteenth thereof.

*The carrier, together with four other companies in the case of the Memphis Union Station Company, and with two other companies in the case of the Arkansas and Memphis Railway Bridge and Terminal Company, jointly and severally guarantees bonds as shown above both as to principal and interest, par value.

Results of Corporate Operations.

In the income account as stated by the carrier "total railway operating expenses" includes items aggregating $685,429.32 said to represent expenditures for additions and betterments prior to 1905, and "miscellaneous income charges" includes $869,399.69 of like items. "Miscellaneous income" includes a credit of $252,726.72 representing the proportion of securities, cash and other assets turned over by the reorganization committee.

Interest on equipment trust obligations aggregating $272,437.21 was charged to investment in road and equipment instead of to income account.

No interest was accrued or paid on the second mortgage 4 per cent income bond certificates until 1899, when 2 per cent was paid. The full 4 per cent per annum has been paid since that year. The total interest accrued on this issue was $2,947,611.68, of which $1,396,280 was charged to income account and $1,551,331.68 to profit and loss.

No dividends have been accrued or received on the capital stock of any of the affiliated companies owned by the carrier. With the exception of $97,465.72, no interest has been accrued on the second mortgage bonds of the Southwestern of Texas and the Tyler Southeastern (total par value $5,052,500.00), although the carrier has paid full interest since 1899 on the second mortgage bond certificates issued against them. No interest has been accrued on the certificates of indebtedness of the Southwestern of Texas ($8,455,840.47) held by the carrier, nor on advances to affiliated companies for additions and betterments or for operation.

88 Since 1901, the carrier has not credited "income from funded securities" with the interest accrued on the first mortgage bonds of the Southwestern of Texas and the Tyler Southeastern, but has credited the same against its own "interest on funded debt." This practice has the effect of reducing both of these accounts by the amount of this interest.

Profit and loss account.—An analysis of the profit and loss account of the carrier follows:

Credits.

Credit balance transferred from income	$21,159,602.33
Profit on road and equipment sold	115,135.14
Delayed income credits	178,984.38
Proportion of assets returned by reorganization committee	110,833.34
Arbitrary credit charged to investment in road and equipment	2,000,000.00
Securities of Gray's Point acquired in guarantee of bonds—	
Capital stock (par value $50,000)	1.00
Bonds (par value $33,000)	33,000.00

Profit on sale of stock of The Texas & Louisiana Railroad Company to the Southwestern of Texas	145,492.11
Profit on sale of stock of Brunswick Farming Company	2,395.70
Profit on state and county warrants	43,843.92
Adjustment in book value of—	
Bonds of the Pine Bluff Arkansas River Railway	199,648.30
Bonds of Dallas Terminal Railway & Union Depot Company	11,351.56
Bonds of the Paragould	4,063.50
Profit on second mortgage income bond certificates, reacquired	43,336.61
Unclaimed wages	36,653.51
Miscellaneous credits	149,112.13
Total	24,233,453.53

Debits.

Discount on funded debt		2,958,806.18
Discount assumed on bonds of subsidiaries		109,634.92
Dividends		4,575,539.48
Interest on funded debt		1,570,198.33
Other delayed income debits		315,637.63
Cost of property of the Stuttgart and Arkansas River Railroad Company		45,050.00
Expenditures said to be for additions and betterments		2,442,970.64
Indebtedness of subsidiaries written off—		
The Southwestern of Texas to June 30, 1912	$5,691,918.41	
89 Stephenville North & South Texas Railway Company to June 30, 1913	550,620.47	
The Paragould to December 31, 1913	43,977.94	
		6,289,516.82
Preliminary surveys abandoned		5,950.29
Loss on retired road and equipment		629,129.25
Miscellaneous debits		243,515.74
Appropriated for investment in physical property		163,110.61
Total		19,349,059.89
Credit balance		4,884,393.64

Discount on funded debt to the amount of $1,985,210 was erroneously charged to investment in road and equipment.

The debit of $2,442,970.64 stated to cover proportion of expenditures for additions and betterments prior to 1905, is discussed more fully herein under the caption "investment in road and equipment."

Notwithstanding the fact that the Southwestern of Texas, The Pine Bluff Arkansas River Railway, the Paragould, and the Stephenville North & South Texas Railway Company have been operated at a loss, the greater portion of which has been assumed by the carrier, the carrier has paid dividends on its preferred stock as follows:

Year.	Rate per cent.	Amount.
1909	2	$397,875.00
1910	5	994,682.50
1911	4	795,746.00
1912	4½	895,214.25
1913	5	994,682.48
1914	2½	497,341.25
1915	None	.....
		4,575,539.48

The records of the carrier and its subsidiary companies show that the par value ($28,000,000) of the first and second mortgage bond certificates issued by the carrier to the reorganization committee was in excess of the maximum amount of money expended on the physical property and other assets and property acquired at the reorganization. From this it follows that the total of the capital stock of the carrier, $16,500,000 of common and $20,000,000 of preferred, represents no actual investment in the properties.

Investment in Road and Equipment.

As hereinbefore stated, the investment in road and equipment on valuation date, as shown on the books of the carrier, amounted to $67,430,327.70, and consisted of the following:

90 Property of the Arkansas acquired in the reorganization	$46,881,248.60
Extensions	110,057.44
Additions and betterments	16,181,374.45
Net discount on securities	1,985,210.00
Interest on equipment trust obligations	272,437.21
Arbitrary charge credited to profit and loss	2,000,000.00
	67,430,327.70

The above sums can not be stated by primary accounts.

The property of the Arkansas acquired in the reorganization of 1891 is entered in the investment in road and equipment account at $46,881,248.60, the details of which are as follows:

Securities issued to reorganization Committee:		
Common stock, par value	$16,500,000	
Preferred stock, par value	20,000,000	
First mortgage certificates, par value	20,000,000	
Second mortgage certificates, par value	8,000,000	
		$64,500,000.00
Less those issued in acquisition of the St. Louis & Texas and the Tyler Southeastern securities:		
Capital stock, par value	2,750,000	
First mortgage certificates, par value	10,105,000	
Second mortgage certificates, par value	5,052,500	
		17,907,500.00
		46,592,500.00
Equipment trust notes of the Arkansas assumed		288,748.60
Net total		46,881,248.60

The Arkansas paid for the construction of its line with securities. The records show that the total maximum outlay in creating its property could not have exceeded $11,301,661.89, as hereinafter explained in connection with the Arkansas, but this does not include any allowance for interest during construction for its branch lines.

The item of $110,057.41 represents expenditures for extensions, as follows:

1907—Extension to Shreveport branch	$53,341.16
1911—Extension to Little Rock branch	56,716.28
Total	110,057.44

The figure of $16,181,374.45 represents expenditures for additions and betterments, less retirements, charged to this account. In addition thereto the carrier has made charges to other accounts for expenditures claimed to have been made for additions and betterments, aggregating $3,997,799.65, as hereinafter explained.

The carrier owns a one-thirteenth interest in the East St. Louis (relay) passenger station, which is built on land owned by the Vandalia Railroad Company. The cost of the carrier's portion of this property is included in its investment in road and equipment account.

91 As hereinbefore stated, the rolling stock of the carrier and of the Southwestern is jointly owned, each having an undivided interest therein, the carrier's interest being 60 per cent and

that of the Southwestern 40 per cent. However, prior to 1907, somewhat more than 60 per cent of the cost was charged to the carrier and somewhat less than 40 per cent to the Southwestern. Since 1907 the charges have corresponded to the ownership; namely, 60 per cent in the one case and 40 per cent in the other.

The carrier's stated investment is not in agreement with our prescribed form of account for investment in road and equipment in the following known respects:

It does not include the following item, which should apparently be added:

Purchase price of property of Stuttgart and Arkansas River Railroad Company, charged to profit and loss account	$45,050.00
Total	45,050.00

It does not include the following credits, which should apparently be deducted:

Securities and cash turned over by reorganization committee, less certain liabilities assumed, credited to income account	252,726.72
Securities and cash turned over by reorganization committee, less certain liabilities assumed, credited to profit and loss account	110,833.34
Total	363,560.06

It includes the following charges, which should apparently be deducted:

Cost of noncarrier lands	768.45
Interest on equipment trust obligations, which should have been charged to income account	272,437.21
Net discount on securities	1,985,210.00
Arbitrary charge credited to profit and loss	2,000,000.00
Total	4,258,415.66
Grand total deductions	4,621,975.72
Net deductions	4,576,925.72

The details of each of the above items are stated below:

The purchase price of the property of the Stuttgart and Arkansas River Railroad Company, $45,050, was not included in this account, but charged to profit and loss.

92 Income and profit and loss accounts were credited with $252,726.72 and $110,833.34, respectively, representing se-

curities and cash turned over by the reorganization committee less certain liabilities assumed. These amounts should have been credited to investment in road and equipment.

The carrier charged $768.45, representing costs of noncarrier lands, to its investment in road and equipment account. This amount should be deducted therefrom.

Interest on equipment trust obligations aggregating $272,437.21 was charged to this account instead of to income account.

Discount on securities disposed of and reacquired, charged and credited to this account, is as follows:

Discount on first consolidated mortgage bonds sold	$2,659,160
Discount on second mortgage certificates reacquired (credit)	673,950
Net total	1,985,210

This net total should be deducted from the investment account.

When the $2,000,000 of second mortgage certificates were sold an arbitrary charge of that amount was made to this account, which was concurrently credited to profit and loss. This item has no place in this account.

If the above changes were made, the investment account would be reduced to $62,853,401.98.

This sum, however, may not be a correct statement of the carrier's investment in road and equipment, for the reason that certain items aggregating $3,997,799.65, which the carrier claims represent expenditures for additions and betterments, were charged to other accounts. The amounts of these items, and the accounts to which they were charged, are as follows:

Operating expenses	$685,429.32
Income account	869,399.69
Profit and loss	2,442,970.64
Total	3,997,799.65

The records do not show how much, if any of these items may properly be transferred to investment in road and equipment. A number of the items included therein represent the cost of renewals, a portion of which was properly chargeable to operating expenses.

Original Cost to Date.

Cost of property as a whole.—The original cost to date of the property of the carrier can not be ascertained from the obtainable records. The records do, however, disclose certain costs which, in the aggregate, represent the maximum recorded outlay in creating or acquiring all the common-carrier property of the carrier.

93 The following figures represent all such recorded outlay:

Expended on the property of Arkansas (see report on that company)	$11,301,661.89
Extensions	110,057.44
Purchase price of the property of Stuttgart and Arkansas River Railroad Company	45,050.00
Additions and betterments (so recorded)	16,181,374.45
(Charged to operating expenses)	685,429.32
(Charged to income account)	869,399.69
(Charged to profit and loss)	2,442,970.64
Total	31,635,943.43

A comparison of the above figures with an analysis of the investment accounts shows that items not properly belonging to the acquisition of property have been omitted from these figures. The total figure may be excessive, however, in that it includes the entire cost of relaying and standard gauging the Arkansas and a total of $3,997,799.65 charged to other than property accounts. Doubtless some portion of this last-named sum should be charged to operation, but the records do not permit us to determine what portion.

As hereinbefore stated, no interest during construction for its branch lines is included in the item of $11,301,661.89 expended on the property of the Arkansas.

Machinery and equipment.—The major portion of the machinery and equipment used by the carrier, as hereinbefore stated, is jointly owned with the Southwestern of Texas, the carrier owning 60 per cent of the same.

Cost of roadway machines and machinery.—The carrier reports the cost of wholly owned roadway machines and shop and power plant machinery, on hand on valuation date, as follows:

Roadway machines	521	$17,348.20
Shop machinery	254	265,557.96
Power plant machinery	19	60,832.59
Power substation apparatus	4	2,941.06
Total	798	346,639.81

A summary of these returns, showing the result of a check of the costs reported, follows:

Class.	Number of units.	Supported by records.	Estimates of carrier.
oadway machines:			
Initial cost at f. o. b. point	521	.....	$17,348.20
hop machinery:			
Initial cost at f. o. b. point	254	.....	168,264.17
Initial cost of miscel- 4 laneous small tools	....	.....	73,309.74
Miscellaneous incidental costs	....	.....	11,171.92
Additions and betterments	....	.....	11,978.18
Freight charges	....	.....	793.95
Total	254	.....	265,517.96
ower plant machinery:			
Initial cost at f. o. b. point	19	.....	48,894.55
Miscellaneous incidental costs	....	.....	5,675.88
Additions and betterments	....	.....	6,262.16
Total	19	.....	60,832.59
ower substation apparatus:			
Initial cost at f. o. b. point	4	.....	2,894.88
Miscellaneous incidental costs	....	.....	46.18
Total	4	.....	2,941.06
Grand total	798	.....	346,639.81

The carrier reports 24 units of jointly owned roadway machines on hand, on valuation date, as having cost $22,214.98. Of these claimed costs $19,548.53 are supported by the accounting records The balance of $2,666.45 represents estimates of the carrier which can not be verified. The carrier's portion of the verifiable costs is $11,729.12.

The carrier also estimates the initial cost of patterns of shop machinery, jointly owned with the Southwestern of Texas, to be

$19,643.95, but no portion of this estimated cost is supported by the accounting records.

Cost of equipment.—The carrier reports the cost of jointly owned equipment on hand on valuation date as follows:

Steam locomotives	250	$3,608,078.6
Freight-train cars	13,588	10,899,879.7
Passenger-train cars	233	1,921,610.1
Work equipment	1,103	880,216.1
Total	15,174	17,309,784.7

The correction of certain errors in accounting and reporting on freight-train cars reduces this sum to $16,508,731.04.

A summary of these returns, showing the result of a check thereof, and the number of units inventoried by us, follows:

95 Class.	Number of units.	Supported by records.	Estimates of carrier.
Steam locomotives:			
Initial cost, including units built by carrier and units purchased second hand	250	$3,187,627.21	$199,683.01
Miscellaneous incidental costs	....	36,205.67	4,612.92
Additions and betterments	....	.....	159,254.23
Freight charges	....	20,695.64	.....
Total	250	3,244,528.52	363,550.16
Freight-train cars:			
Initial cost, including units built and rebuilt by carrier, purchased second-hand, etc.	13,588	9,581,042.43	359,459.97
Miscellaneous incidental costs	....	.....	13,983.72
Additions and betterments	....	8,287.54	111,388.75
Freight charges	....	13,825.88	10,837.78
Total	13,588	9,603,155.85	495,670.22

Class.	Number of units.	Supported by records.	Estimates of carrier.
Passenger-train cars:			
Initial cost, including units built by the carrier and cost of converting certain cars..	233	1,770,757.96	86,498.15
Miscellaneous incidental costs	....	1,367.14	4,198.06
Additions and betterments	....	.....	55,722.98
Freight charges	....	1,891.34	1,174.50
Total	233	1,774,016.44	147,593.69
Work equipment:			
Initial cost at f. o. b. point	1,103	593,080.00	249,584.30
Miscellaneous incidental costs	....	.....	1,370.19
Additions and betterments	....	.....	31,163.22
Freight charges	....	5,018.45	.....
Total	1,103	598,098.45	282,117.71

In rebuilding various units of machinery and equipment (except locomotives) the carrier used trucks and other parts of their old equipment, carrying the salvage value of such parts into the
96 costs of the completed units. In converting passenger equipment, estimated depreciated value was applied in establishing the value of the unit converted. In converting freight-train cars to work equipment, the carrier depreciated the original cost at the rate of 4 per cent per annum in establishing the value of the converted unit. For the purposes of this report, such depreciated and salvage values are treated as carrier's estimated cost of equipment.

None of the carrier's estimates being verifiable from the records, they are excluded from the total costs of joint equipment, and the total verifiable costs of said joint equipment is found to be $15,219,799.26. Of this total joint cost, the portion of the carrier is 60 per cent, or $9,131,879.56.

The verified costs of the carrier's portion of jointly owned tools, equipment and machinery, 60 per cent, is found to be $9,143,608.68.

Cost of lands.—The carrier reported the cost of lands owned, used and not used for common-carrier purposes, on date of valuation, excluding proceeds from part parcels sold, as $1,938,363.71, of which $36,930.73 were miscellaneous costs.

The claimed land costs should be reduced to $1,730,736.36 by the exclusion of a total of $207,627.35, consisting of the following items:

Interest on deferred payments for terminal land purchased at St. Louis	$131,530.72
Rents from buildings on St. Louis terminal land prior to removal	8,004.42*
Payments for land by citizens	63,767.84
Errors account duplications	2,146.20
Construction expenses not classifiable as land expenses	2,121.02
Payments for use of land by telegraph and telephone companies	2,953.35*
Error in consideration	1,150.00*
Interest on deferred payments	791.22
Refund of unallocated taxes	81.00*
Rents collected prior to removal of buildings	500.00*
Estimated cost of gravel furnished, the actual cost of which is not of record	19,359.94
Miscellaneous	599.18
	207,627.35

The following summary shows the classification of the lands according to the results of a check of the costs reported:

96½ Classification.	Parcels.	Cost.
Lands devoted wholly to carrier purposes:		
Owned and used:		
Costs supported by the accounting records:		
Lands acquired by purchase	187	$166,224.89
Lands acquired by condemnation	155	57,185.10
Streets and alleys vacated	2	31,000.00
Miscellaneous costs		5,641.94
Total	344	260,051.93
Costs not supported by the accounting records:		
Substantial considerations recited in deeds	183	18,356.50
Aids and nominal considerations	1,163	.....
No deed or other conveyance	831	.....
No consideration shown in deed or other conveyance	22	.....

*Additions.

Classification.	Parcels.	Cost.
No consideration paid for land acquired by condemnation	16	.....
Total	2,215	18,356.50
Less proceeds from part parcels sold	.....	11,311.05
Owned but not used:		
Costs supported by the accounting records:		
Lands acquired by purchase	1	100.00
Miscellaneous costs	.....	1.50
Totals	1	101.50
Costs not supported by the accounting records:		
Substantial considerations recited in deeds	2	1,000.00
Nominal considerations recited in deeds	22	.....
No deed or other conveyance	9	.....
Total	33	1,000.00
Used but not owned:		
Lands of other than carriers used under leases or contracts	1	.....
Lands of other carriers used under leases or contracts	6	.....
Total	7	.....
Lands devoted partly to carrier and partly to noncarrier purposes; owned:		
Costs supported by the accounting records:		
Lands acquired by purchase	26	1,361,338.14
Lands acquired by condemnation	7	895.00
Miscellaneous costs	.....	12,207.82
Total	33	1,374,440.96

Classification.	Parcels.	Cost.
Costs not supported by the accounting records:		
Aids and nominal considerations recited in deeds	3	.....
No deed or other conveyance	3	.....
Total	6	.....
Lands devoted wholly to noncarrier purposes; owned:		
Costs supported by the accounting records:		
Lands acquired by condemnation	3	355.00
Miscellaneous costs	.....	13.45
Total	3	368.45
Costs not supported by the accounting records:		
Substantial considerations recited in deeds	1	400.00
Nominal considerations recited in deeds	2	.....
Total	3	400.00
Rights in public domain; owned and used:		
Costs supported by the accounting records:		
Streets and alleys used jointly with public—		
For which abutting damages were paid	2	67,368.65
For right to construct ditch along street	1	450.00
Waterway crossings used under acts of Congress	5	.....
Total	8	67,818.65

Class.	Number of units.	Supported by records.	Estimates of carrier.
Rights in private domain; owned and used:			
Costs supported by the acounting records:			
Right to construct ditch		1	438.40
Right to take or use land, stone or timber		1	5.00
Railroad crossings		3	.....
Total		5	443.40
98 Unassignable costs: supported by the accounting records:			
Miscellaneous costs		.....	19,066.02

The cost of lands owned by the Grays' Point, the Paragould, and the Central are not shown in the above tabulation, but are included in the reports upon the properties of the respective owners.

The above land costs do not include an estimated amount of $19,359.94 claimed as the value of 12,000 cubic yards of sand furnished by the carrier to the city of Shreveport, La., for the right to make joint use of Commerce Street with the public.

There are 831 parcels of land used by the carrier for which it shows no deed or other evidence of title. Of these 831 parcels there are 20 parcels which belonged to the United States Government and 202 parcels which belonged to the state of Arkansas when the line was constructed.

Nothing was reported by the carrier as having been paid for the right to cross five navigable streams.

The details of the item of $36,930.73, representing miscellaneous land costs, are as follows:

Classification.	Missouri.	Arkansas.	Louisiana.	Total all states.
Recording costs:				
Carrier lands:				
Owned and used	$27.45	$241.50	$30.85	$299.80
Owned but not used	.....	1.50	.....	1.50
Partly carrier and partly noncarrier	2.50	16.50	.....	19.00
Unassignable	12.70	161.52	17.10	191.32
Total	42.65	421.02	47.95	511.62
Salaries and expenses of way agents, etc.:				
Carrier lands:				
Owned and used	.....	261.30	.....	261.30
Unassignable	.....	3,021.17	.....	3,021.17
Total	.....	3,282.47	.....	3,282.47

Classification.	Missouri.	Arkansas.	Louisiana.	Total all states.
Other damages:				
Carrier lands:				
Owned and used.....	73.00	170.00	131.65	374.65
Unassignable	.....	203.50	.....	203.50
Total	73.00	373.50	131.65	578.15
99				
Cost of removing and relocating property:				
Carrier lands:				
Owned and used.....	33.50	1,079.00	.....	1,112.50
Partly carrier and partly noncarrier	1,364.02	.....	.....	1,364.02
Unassignable	.....	225.00	.....	225.00
Total	1,397.52	1,304.00	.....	2,701.52
Special counsel fees and court costs:				
Carrier lands:				
Owned and used.....	276.91	2,796.26	62.73	3,135.90
Noncarrier lands	.....	13.45	.....	13.45
Partly carrier and partly noncarrier	.....	307.02	.....	307.02
Unassignable	.....	15,283.50	.....	15,283.50
Total	276.91	18,400.23	62.73	18,739.87
Miscellaneous:				
Carrier lands:				
Owned and used.....	145.38	302.91	9.50	457.79
Partly carrier and partly noncarrier	10,495.90	21.88	.....	10,517.78
Unassignable	3.05	79.73	58.75	141.53
Total	10,644.33	404.52	68.25	11,117.10
Grand total.....	12,434.41	24,185.74	310.58	36,930.73

Miscellaneous Physical Property.

The carrier's recorded investment in physical property not used for common carrier purposes consists of the following:

One-sixth interest in Pintsch gas compressing plant at Texarkana, Ark.	$7,845.47
Track material leased	480.98
	8,326.45

The ownership in the gas plant is based on a contract with the Pintsch Gas Compressing Company, of New Jersey, dated November 19, 1900, providing for the acquisition of a one-sixth partnership interest in the plant as constructed and in improvements and profits in the same ratio, and also providing for the purchase of gas by the carrier for lighting its cars. This contract is in turn based on a contract dated October 11, 1900, between the Pintsch Compressing Company and the St. Louis, Iron Mountain and Southern Railway Company for the construction of the plant on land of the latter at Texarkana, and the sale of a one-sixth interest each to the carrier and to the Texas and Pacific Railway Company.

The item of $180.98 represents the value of rails and fastenings leased to S. H. Bolinger and Company, Ltd., saw mill operators, of Bolinger, La., at an annual rental of 6 per cent on that value.

100 Investments in Other Companies.

The carrier owns investments in other companies of a par value of $33,810,757.36, which it carries at a book value of $33,026,355.81. The details of these investments are as follows:

Stocks.

Capital stock of the Southwestern of Texas, including Tyler, Southeastern:

Par value	$2,750,000.00
Book value	2,750,000.00

received from the reorganization committee in exchange for securities of the carrier of like amount.

Capital stock—the Paragould:

Par value	44,000.00
Purchased for cash	13,200.00

Capital stock—the Paragould; received as a bonus with bonds for the nominal sum of $1:

Par value	56,000.00

The $100,000 par value of stock of the Paragould is carried at a book value of $13,201.

Capital stock—The Pine Bluff Arkansas River Railway:

Par value	$100,000.00

Capital stock—The Pine Bluff Arkansas River Railway:

Par value	100,000.00

The first item above of capital stock of The Pine Bluff Arkansas River Railway was purchased for $10,000 cash in 1901 or 1902. The second item, together with $50,000 of bonds, was purchased in 1898 for $27,851.70 cash (see bonds of The Pine Bluff Arkansas River Railway, to which purchase price is applied, below). The book value of both items of capital stock was increased from $10,000 to $195,000 by credit to profit and loss of $189,500.

Capital stock—The Gray's Point:

Par value	$500,000.00
Book value	1.00

This stock was received as part consideration for a guarantee of bonds.

Capital stock—Southern Illinois and Missouri Bridge Company:

Par value	$10,000.00
Book value	10,000.00

This stock was purchased for $10,000 cash.

101 Capital stock—Dallas Terminal Railway & Union Depot Company:

Par value	10,000.00
Book value	9,300.00

This stock was purchased for $10,000 cash in connection with the following transactions:

In 1901 the carrier acquired the entire outstanding issue of capital stock of the Dallas Terminal Railway & Union Depot Company, par value $64,500, and advanced funds to pay certain notes of the company and accrued interest thereon. The total amount expended by the carrier in this transaction was $269,646.74. In January, 1905, the capital stock of the company was reduced to $10,000, $54,500 par value being cancelled. From 1901 to January 18, 1905, the carrier advanced $411,166.22 for construction purposes, including interest at 6 per cent, amounting to $17,389.63. In March, 1905, the carrier received $731,000 par value of first mortgage 5 per cent bonds in liquidation of all indebtedness to January 18, 1905. The carrier placed the book value on the stock and bonds owned as follows:

Amount paid for capital stock and in liquidation of certain notes and accrued interest thereon		$269,646.74
Interest at 6 per cent on the above amount from 1901 to January 18, 1905		48,135.48
Construction advances, including interest		411,166.22
Amount credited to profit and loss to bring securities to par	$12,051.56	
Less par value of 7 directors' shares	700.00	
		11,351.56
		740,300.00

This $740,300 the carrier has divided as follows:

Capital stock	$9,300.00
First mortgage bonds	731,000.00
	740,300.00

Capital stock—The Shreveport Bridge & Terminal Company:

Par value	$50,000.00
Book value	2,375.00

This stock was subscribed for and 5 per cent, $2,500, paid in cash. The subscription price ($125.00) of 25 directors' shares was charged to operating expenses.

Capital stock—Eastern Texas Railroad Company:

Par value	$454,500.00
Book value	604,666.67

102 This stock was purchased with $606,000 par value of first consolidated mortgage bonds of the carrier at 75. $1,333.33 of this representing 10 directors' shares, was charged to profit and loss.

Capital stock—Memphis Railroad Terminal Company:

Par value	$10,000.00
Book value	10,000.00

This stock was purchased for $10,000 cash (1/10th of the entire issue).

Capital stock—First Infantry Armory Association:

Par value	$500.00
Book value	500.00

This stock was purchased for $500 cash.

Capital stock—Memphis Union Station Company:

Par value	$20,000.00
Book value	1.00

This stock was issued without cost (1/5th of entire issue).

Capital stock—Terminal Railroad Association of St. Louis:

Par value	$205,800.00
Book value	1.00

This stock was issued without cost (1/5th of entire issue).

Capital stock—the Central:

Par value	$150,000.00
Book value	95,000.00

This stock was purchased for $95,000 cash.

Capital stock—Stephenville North & South Texas Railway Company:

Par value	$138,300.00
Book value	120,152.78

This stock was purchased for $120,152.78 cash.

Capital stock—Valley Terminal Railway:

Par value	$5,000.00
Book value	5,000.00

This stock was purchased for $5,000 cash.

The Valley Terminal Railway is a corporation organized in the interest of the carrier to construct terminals near East St. Louis, Ill. The project is still in process of development.

103 Capital stock—Main Street Warehouse Company:

Par value	$10,000.00
Book value	10,000.00

This stock was purchased for $10,000 cash.

The Main Street Warehouse Company was incorporated in 1913, in the interest of the carrier, for the purpose of conducting a storage and warehouse business. It leases the four upper floors of the North St. Louis freight house building from the carrier.

Capital stock—Arkansas and Memphis Railway, Bridge and Terminal Company:

Par value	$3,400.00
Book value	3,400.00

purchased for $3,400 cash (1/3d of entire issue).

Bonds.

First mortgage 4 per cent gold bonds—Southwestern of Texas:

Par value	$9,445,000.00
Book value	9,445,000.00

received from reorganization committee in exchange for securities of the carrier, dollar for dollar.

Second mortgage 4 per cent gold Bonds—Southwestern of Texas:

Par value	$4,722,500.00
Book value	4,722,500.00

received from reorganization committee in exchange for securities of the carrier, dollar for dollar.

First mortgage 4 per cent gold bonds—Southwestern of Texas (The Tyler Southeastern):

Par value	$660,000.00
Book value	660,000.00

received from reorganization committee in exchange for the carrier's securities, dollar for dollar.

Second mortgage 4 per cent gold bonds—The Southwestern of Texas (The Tyler Southeastern):

Par value	$330,000.00
Book value	330,000.00

received from reorganization committee in exchange for carrier's securities, dollar for dollar.

First mortgage 5 per cent gold bonds—Dallas Branch (Southwestern of Texas):

Par value	$280,000.00
Book value	280,000.00

received in payment of construction advances of $280,000.

104 First mortgage 5 per cent gold bonds—Lufkin Branch (Southwestern of Texas).

Par value	$292,000.00
Book value	292,000.00

received in payment of construction advances of $292,000.

First mortgage bonds—The Pine Bluff Arkansas River Railway:

Par value	$50,000.00

purchased for cash, $27,851.70.

First mortgage bonds—The Pine Bluff Arkansas River Railway:

Par value	$50,000.00

purchased with $62,500 of first consolidated mortgage bonds at 80.

First mortgage bonds—The Pine Bluff Arkansas River Railway:

Par value	$26,000.00

received in payment of construction advances of $26,000.

The total of $126,000 par value of these bonds of The Pine Bluff Arkansas River Railway is carried at a book value of $126,000.00.

First mortgage bonds—Southern Illinois and Missouri Bridge Company:

Par value	$600,000.00
Book value	600,000.00

purchased for $660,000 cash, being 1/5th of the entire issue.

First mortgage bonds—Dallas Terminal Railway & Union Depot Company:

Par value	$731,000.00
Book value	731,000.00

purchased in connection with the purchase of the $10,000 par value capital stock of the same company as hereinabove explained.

First refunding and extension bonds—The Gray's Point:

Par value	$838,000.00
Book value	838,000.00

received in payment of construction advances of $838,000.00.

First mortgage bonds—Stephenville North & South Texas Railway Company:

Par value	$184,000.00
Book value	184,000.00

105 received in payment of construction advances of $184,000, being 7.06 per cent of the entire issue.

First and refunding bonds—The Paragould:

Par value	$100,000.00
Book value	100,000.00

These $100,000 Paragould first mortgage 6 per cent bonds were acquired as follows:

1894—In exchange for $25,000 par value of Paragould & Buffalo Island Railway Company (predecessor of the Paragould) first mortgage 7 per cent bonds (retired)	$25,000.00
1897—In liquidation of advances ($26,937.50)	31,000.00
1912—Cash	44,000.00
	100,000.00

The difference ($1,063.50) between the cost and the par value of these bonds was credited to profit and loss in 1914, making the book value $100,000. The $25,000 of Paragould & Buffalo Island Railway Company bonds were acquired by the carrier as part of the assets of the Arkansas taken over in the reorganization, exchanged for $100,000 par value of first mortgage bonds.

First and refunding bonds—The Paragould:

Par value	$411,000.00
Book value	411,000.00

received in payment of construction advances of $411,000.

Certificates of Indebtedness.

The Southwestern of Texas:

Par value	$8,455,840.47
Book value	8,455,840.47

received in payment of advances for construction, equipment and betterments of like amount.

Notes.

Southwestern of Texas:

Par value	$186,360.00
Book value	186,360.00

received in payment of advances of $186,360.

Dallas Terminal Railway & Union Depot Company:

Par value	$203,288.80
Book value	203,288.80

106 received in payment of advances of like amount.

Advances for Additions and Betterments.

The carrier has made advances for additions and betterments, all of which are carried at their par value, as follows:

Southwestern of Texas	$469,235.66
The Paragould	1,757.54
The Pine Bluff Arkansas River Railway	29,174.49
The Gray's Point	6,653.03
Southern Illinois and Missouri Bridge Company	40,099.29
Dallas Terminal Railway & Union Depot Company	2,455.75
Memphis Railroad Terminal Company	111,297.10
Stephenville North & South Texas Railway Company	5,956.48
Valley Terminal Railway	12,000.00
Arkansas and Memphis Railway Bridge and Terminal Company	20,000.00
Total	698,629.37

Operating Advances.

The carrier has made the following operating advances, all of which are carried on the books at par:

Southwestern of Texas	$800,722.73
The Pine Bluff Arkansas River Railway	128,174.72
Dallas Terminal Railway & Union Depot Company	741.27
Total	929,638.72

These amounts represent advances made by the carrier to cover deficits from operation not liquidated or charged off.

Grand Total of Investments in Other Companies.

The total investments in other companies are as follows:

Class.	Par value.	Book value.
Capital Stock	$4,617,500.00	$3,833,098.45
Bonds	18,719,500.00	18,719,500.00
Certificates of indebtedness	8,455,840.47	8,455,840.47
Notes	389,648.80	389,648.80
Advances for additions and betterments	698,629.37	698,629.37
Operating advances	929,638.72	929,638.72
Grand total	33,810,757.36	33,026,355.81

In addition to the operating advances to subsidiary companies unliquidated as of date of valuation (which the carrier shows as "miscellaneous Accounts Receivable" on its balance sheet)
107 the carrier advanced for the same purpose and later charged off to profit and loss the following amounts:

The Southwestern of Texas, to June 30, 1912	$5,694,918.41
Stephenville North & South Texas Railway Company, to June 30, 1913	550,620.47
The Paragould, to December 31, 1913	43,977.94
	6,289,516.82

As hereinbefore stated, the carrier owns all the securities issued by the Southwestern of Texas, The Paragould, The Pine Bluff Arkansas River Railway, The Gray's Point, Dallas Terminal Railway & Union Depot Company, The Shreveport Bridge & Terminal Company, Eastern Texas Railroad Company, The Central, and Stephenville North & South Texas Railway Company, except the following:

The Gray's Point-First mortgage bonds	$500,000.00
The Shreveport Bridge & Terminal Company—First mortgage bonds	450,000.00
The Central—First mortgage bonds	1,085,000.00
Stephenville North & South Texas Railway Company—First mortgage bonds	2,423,000.00
	4,458,000.00

Securities of other companies owned are pledged as part security for the carrier's issues, as follows:

First mortgage bond certificates:	
The Southwestern of Texas—capital stock	$2,741,000.00
The Southwestern of Texas—first mortgage bonds	9,445,000.00
The Tyler Southeastern—first mortgage bonds	660,000.00
Second mortgage bond certificates:	
The Southwestern of Texas—second mortgage bonds	4,722,500.00
The Tyler Southeastern—second mortgage bonds	330,000.00
First consolidated mortgage bonds:	
The Pine Bluff Arkansas River Railway company—first mortgage bonds	126,00.00
The Southwestern of Texas—first mortgage bonds—Dallas branch	280,000.00
The Southwestern of Texas—first mortgage bonds—Lufkin branch	292,000.00
Dallas Terminal Railway & Union Depot Company—first mortgage bonds	731,000.00
Eastern Texas Railroad Company—capital stock	453,500.00
The Pine Bluff Arkansas River Railway Company—capital stock	199,500.00
Dallas Terminal Railway & Union Depot Company—capital stock	9,300.00
First terminal and unifying mortgage bonds:	
The Gray's Point—First refunding and extension mortgage bonds	838,000.00
Stephenville North & South Texas Railway Company—first mortgage bonds	184,000.00
The Gray's Point—capital stock	499,500.00
Stephenville North & South Texas Railway—capital stock	137,400.00
The Shreveport Bridge and Terminal Company—capital stock	47,500.00
The Central—capital stock	149,500.00

Short-term loans:

The Paragould—first and refunding mortgage bonds	250,000.00
Southern Illinois and Missouri Bridge Company—first mortgage bonds	600,000.00
Total	22,695,700.00

Director's shares of capital stock are not pledged.

Leased Railway Property.

Owned by the Carrier—Used Exclusively by Another Carrier.

The carrier owns a branch line from McNeil, Ark., to Magnolia, Ark., 6.74 miles, and leases it for exclusive use to the Louisiana North West Railroad Company, from April 27, 1897, to August 1, 1918, at a rental of 4 per cent per annum on a valuation of $99,000. The rental accrued for the year ending June 30, 1915, was $3,960.

Owned by Other Carriers—Used Exclusively by the Carrier.

Property of the Gray's Point.—The carrier leases from the Gray's Point all of the property of that company extending from Illmo, Mo., to Delta, Mo., a distance of 13.25 miles, for fifty years from August 1, 1906, at an annual rental equal to the interest on the outstanding bonds, taxes and assessments, the lessee guaranteeing the payment of the principal and interest of all bonds of the lessor. The rental accrued for the year ending on date of valuation was $66,112.50.

Property of the Paragould.—The carrier leases for exclusive use all of the property of the Paragould, a line extending from Paragould, Ark., to Blytheville, Ark. a distance of 37.34 miles, for thirty years from June 1, 1914, at an annual rental equal to the interest on the outstanding bonds, all taxes and assessments. The lessee guarantees the principal and interest of all the bonds of the lessor. The rental accrued for the year ending on date of valuation, was $25,550.

Property of the Central.—The carrier leases from the Central all of the property of that company, a line extending from Stuttgart, Ark., to England, Ark., and from Rice Junction, Ark., to Hazen, Ark., a distance of 43.41 miles, for thirty years from July 1, 1910, at an annual rental equal to the interest on the outstanding bonds, and all taxes and assessments. The lessee guarantees the principal and interest of all the bonds of the lessor. The rental accrued for the year ending on date of valuation, was $54,250.

Property of St. Louis, Iron Mountain and Southern Railway Company.—The carrier leases for exclusive use from the St. Louis, Iron Mountain and Southern Railway Company (The Iron Mountain Railway Company of Memphis) a freight house and tracks at

Memphis, Tenn., for an indefinite period from April 26,
108 1900. The use of the station is included in the rate of $50 per ton paid to the St. Louis Iron Mountain and Southern Railway Company for handling the carrier's freight traffic between Fair Oaks and Memphis, Tenn.

Owned by the Carrier—Used Jointly with Other Carriers.

The following property owned by the carrier is used jointly with other carriers:

With the St. Louis Iron Mountain & Southern Railway Company, a line from Delta, Mo., to Paragould, Ark., a distance of 97.52 miles, under a fifty year lease from September 8, 1904, at an annual rental of $77,308 per annum and 2 per cent per annum on additions and betterments, and one-half of taxes and assessments. The maintenance and operation are on a wheelage basis.

This lease includes the line of the Gray's Point between Illmo, Mo., and Delta, Mo. The rental accrued for the year ending on date of valuation, was $127,372.97.

With The Pine Bluff Arkansas River Railway, a line from Pine Bluff, Ark., to Rob Roy, Ark., a distance of 7.50 miles, for an indefinite period from August 12, 1898, on a basis of an arbitrary division of freight and passenger revenues. The rental accrued for the year ending on date of valuation, was $3,962.73.

With the Louisiana Railway & Navigation Company, approaches to the Shreveport bridge, with a trackage of .55 of a mile, for ten years from December 1, 1907, at a rental of $750 per annum. The rental accrued for the year ending on date of valuation, was $375.

With the Louisiana & Arkansas Railway Company, approaches to the Shreveport bridge, 1.64 miles, for twenty-five years from November 1, 1910, at an annual rental of $1,440. The rental accrued for the year ending on date of valuation, was $1,440.

With the Louisiana & Arkansas Railway Company, a yard and terminal at Shreveport, La., for an indefinite period from January 1, 1910, at a rental of $1 and $2 per car, plus $300 annual rental for the freight house. The rental accrued for the year ending on date of valuation, was $2,647.97.

With the Vicksburg, Shreveport & Pacific Railway Company, approaches to Shreveport bridge, 2.15 miles, for an indefinite period from April 29, 1915, at $1.08 per train (flat). The rental accrued for the year ending on date of valuation, was $374.76.

With the Chicago, Rock Island and Pacific Railway Company, a line from Kent, Ark., to Camden, Ark., 2.04 miles for five years from October 12, 1913, at an annual rental of 2½ per cent on an agreed valuation. Maintenance and operation are on a wheelage basis. The rental accrued for the year ending on date of valuation, was $5,193.67.

Property of Other Carriers—Used Jointly with the Carrier.

The carrier used jointly property owned exclusively by other carrier as follows:

109 Owned by the Terminal Railway Association of St. Louis, the line from St. Louis, Mo., to East St. Louis, Ill., 3.18 miles, indefinitely from October 18, 1903, at a rental of $3 per passenger car and $1.50 per baggage car. The rental accrued for the year ending on date of valuation, was $11,689.87.

Owned by the Terminal Railway Association of St. Louis, Mo., a passenger station at St. Louis, Mo., compensation on the basis of use. The rental accrued for the year ending on date of valuation, was 2,249.82.

Owned by Vandalia Railroad Company, the line from East St. Louis, Ill., to Willows, Ill., 1.67 miles, indefinitely from May 10, 1912, at a rental of $1.65 per passenger train and cost of any increase in employees. The rental accrued for the year ending on date of valuation, was $1,936.44.

Owned by the Illinois Transfer Railroad Company, a line from Willows, Ill., to Valley Junction, Ill., 3.83 miles, for fifty years from September 8, 1904. This is used by the carrier as a tenant of the St. Louis, Iron Mountain & Southern Railway Company on a car basis. The rental accrued for the year ending on date of valuation, was $203.76.

Owned by the St. Louis, Iron Mountain & Southern Railway Company, the line from Valley Junction, Ill., to North Junction, Ill., 119.26 miles, for fifty years from September 8, 1904, at an annual rental of 2 per cent on the investment and one-half of the taxes and assessments. The maintenance and operation are on a wheelage basis. The rental accrued for the year ending on date of valuation, was $153,889.86. The carrier also uses a yard and terminal at Du Po, Ill., belonging to the same company, under a lease not executed. The annual rental accrued for the year ending on valuation date was $31,247.25.

Owned by the Southern Illinois and Missouri Bridge Company, the line from Bridge Junction, Ill., to Illmo, Mo., 4.64 miles, for fifty years from November 1, 1901. The interest on bonds, taxes, maintenance and operation are divided between tenants on the basis of traffic moved across the bridge. The rental accrued for the year ending on date of valuation, was $30,986.50.

Owned by the Chicago & Eastern Illinois Railroad Company, the line from Bridge Junction, Ill., to Olive Branch, Ill., 9.35 miles, indefinitely from September 2, 1908. The rental is $1 per train mile with the standard detour contract. The rental accrued for the year ending on date of valuation, was $3,946.53.

Owned by the Illinois Central Railroad Company, the line from Olive Branch, Ill., to Cairo, Ill., 17.68 miles, indefinitely from January 1, 1911, at a rental of $1 per train mile with the standard detour contract. The rental accrued for the year ending on date of valuation, was $5,553.

Owned by the Chicago, Rock Island and Pacific Railway Company (Choctaw, Oklahoma and Gulf Railroad Company) the line from Brinkley, Ark., to Bridge Junction, Ark., 64.67 miles, indefinitely from April 1, 1912, at a rental of $.55 per train mile and 2½ per cent per annum on additions and betterments. The rental accrued for the year ending on date of valuation was $25,915.09.

110 Owned by the Kansas City & Memphis Railway & Bridge Company, the line from Bridge Junction, Ark., to Memphis, Tenn., 2.54 miles, indefinitely from May 14, 1912, at a rental of $1 per passenger car and $.25 per passenger. The rental accrued for the year ending on date of valuation, was $5,779.90.

Owned by the St. Louis-San Francisco Railway Company, tracks at Memphis, Tenn., .36 of a mile, for five years from April 1, 1912, at a total consideration of $1,800 per annum. The rental accrued for the year ending on date of valuation, was $1,350.

Owned by the Memphis Union Station Company, passenger station and tracks at Memphis, Tenn., .46 of a mile, for fifty years from November 1, 1909. The rental is a proportion of the interest on bonds, taxes and operating expenses on the basis of cars handled. The rental accrued for the year ending on date of valuation, was $11,141.49.

Owned by the St. Louis, Iron Mountain & Southern Railway, station and tracks at Pine Bluff, Ark., 1.24 miles, for twenty-five years from July 22, 1906. The rental is $1 per train with an annual rental of 2 per cent on the value of the station. The expenses of the station are divided on the basis of ticket sales. The rental accrued for the year ending on date of valuation, was $3,742.31.

Owned by Shreveport Bridge & Terminal Company, bridge at Shreveport, La., .36 of a mile, for fifty years from April 1, 1905, at a rental of $.10 per ton on freight and $.10 per passenger. The rental accrued for the year ending on date of valuation, was $21,302.10.

Owned by the Louisiana & Arkansas Railway Company, tracks at Shreveport, La., .85 of a mile, for twenty-five years from January 1, 1910, at an annual rental of 2½ per cent on the investment. The operating expenses are divided on a wheelage basis. The rental accrued for the year ending on date of valuation, was $7,223.84.

Owned by Southwestern of Texas, tracks and freight station at Texarkana, Arkansas-Texas state line, .48 of a mile, for twenty years from September 30, 1898, at an annual rental of 2 per cent on the valuation. The operating expenses are divided on the basis of use. The rental accrued for the year ending on date of valuation, was $1,398.48.

Owned by the St. Louis, Iron Mountain and Southern Railway Company (The Texas and Pacific Railway Company), a passenger station at Texarkana, Arkansas-Texas state line, under an understanding not witnessed by any signed contract and not formally agreed upon. Rental accrued for the year ending on date of valuation, was $420.48.

Owned by St. Louis, Iron Mountain & Southern Railway Company, boat transfer between Cairo, Ill., and Bird's [illegible]nt, Mo., in-

definitely from November 1, 1913, at an annual rental of 6 per cent interest on the valuation of the steamer. The operating expenses are divided on the basis of service. The rental accrued for the year ending on date of valuation, was $2,600.04.

111 Trackage Rights on Leased Lines Granted by the Carrier to Other Carriers.

The following property leased by the carrier is used jointly by it with other carriers:

Property of the Gray's Point.—With the Chicago and Eastern Illinois Railroad Company, the line from Illmo, Mo., to Rockview, Mo., a distance of 7.54 miles, for an indefinite period from May 25, 1905, at a monthly rental of $565.50 and one-half of taxes. Operating expenses are on a wheelage basis and 70 per cent of cash fares collected. The rental accrued for the year ending on date of valuation, was $6,786.00.

With the St. Louis Iron Mountain & Southern Railway Company, the line from Illmo, Mo., to Delta, Mo., 13.25 miles, under the terms of lease hereinbefore described under the heading of property "Owned by the carrier—used jointly with other carriers."

With the St. Louis Iron Mountain & Southern Railway Company, a terminal at Illmo, Mo., under an agreement not reduced to a written contract. The rental accrued for the year ending on date of valuation, was $14,383.37.

Property of the Paragould.—With the Blytheville, Leachville & Arkansas Southern Railroad Company, the line from Arbyrd, Ark., to Chickasawba, Ark., a distance of 22.60 miles, for an indefinite period from December 15, 1914, at a rental of 50 cents per freight-train mile. The rental accrued for the year ending on date of valuation, was $2,936.10.

With the Deering Southwestern Railway Company, 1.81 miles of track at Hornersville, Mo., for an indefinite period from September 1, 1911, at a total consideration of $1,800 per annum. The rental accrued for the year ending on date of valuation, was $900.

112 Summary.

Leased Railway Property.

Accrued Rental for Year Ended on Date of Valuation.

Property owned, used solely by other carriers.....	$3,960.00
Property owned, used jointly by other carriers.....	141,367.10
Property of other carriers, used solely by the carrier	145,912.50
Property of other carriers, used jointly by the carrier	322,576.76

Trackage rights on leased lines granted to other carriers by the carrier:

Property of the Gray's Point	21,169.37*
Property of the Paragould	3,836.10

113 *Statement of Income.*

For Year Ended June 30, 1915, and for Period June 1, 1891, to June 30, 1915.

Operating income:		
Railway operating revenues:		
Freight revenue	$5,350,283.01	$97,319,093.77
Passenger revenue	1,170,187.77	21,106,895.41
Mail revenue	129,080.92	2,173,402.34
Express revenue	125,925.21	2,012,249.77
Other revenue	132,096.05	1,816,424.77
Total	6,907,572.96	124,428,066.06
Railway operating expenses:		
Maintenance of way and structures	741,835.15	16,204,572.71
Maintenance of equipment	1,172,679.10	18,918,014.05
Traffic	306,440.25	2,454,671.34
Transportation	1,991,569.02	35,360,487.88
General	310,990.24	5,358,212.74
Miscellaneous operations	38,512.60	337,374.77
Transportation for investment	Cr. 4,178.06	Cr. 4,178.06
Total	4,557,848.30	78,629,155.43
Net revenue from railway operations	2,349,724.66	45,798,910.63
Railway tax accruals	403,875.78	3,845,205.59
Uncollectible railway revenues	1,141.26	1,141.26
	405,017.04	3,846,346.85
Railway operating income	1,944,707.62	41,952,563.78

*This amount does not include rental received from St. Louis, Iron Mountain & Southern Railway Company for use of the line from Illmo, Mo., to Delta, Mo., as this rental embraces property owned by the carrier as well as property owned by the Gray's Point, and is included above in the sum of $141,-367.10 covering property owned, used jointly by other carriers.

Nonoperating income:		
Hire of equipment	734,370.95	5,012,358.20
Joint facility rent income	168,217.66	1,004,053.27
Income from lease of road	3,960.00	66,990.00
Miscellaneous rent income	2,089.04	4,453.54
Miscellaneous nonoperating physical property	3,142.79	44,578.18
Dividend income	.....	18.75
Income from funded securities	171,312.50	5,427,248.02
Income from unfunded securities and accounts	38,569.63	889,624.30
Miscellaneous income	250.62	955,061.33
Total	1,121,913.19	13,404,385.59
Gross income	3,066,620.81	55,356,949.37
Deductions from gross income:		
Hire of equipment	290,607.09	3,055,862.86
Joint facility rents	391,282.64	2,410,457.12
Rent for leased roads	145,912.50	716,878.41
Miscellaneous rents	856.75	15,892.04
Interest on funded debt	1,962,206.66	26,408,639.84
Interest on unfunded debt	26,759.49	302,743.20
Maintenance of investment organization	273.75	273.75
Miscellaneous income charges	8,832.70	1,286,599.82
Total	2,826,731.58	34,197,347.04
114 Net income	239,889.23	21,159,602.33
Balance transferred to credit of profit and loss	239,889.23	21,159,602.33

The Gray's Point.

Development of Fixed Physical Property.

The property of the Gray's Point was all acquired by construction. The original line from Delta to Gray's Point, about 16.4 miles, together with 6.2 miles of sidings, was constructed by Johnston Brothers and Faught, under a contract dated August 23, 1897, and was completed and opened for operation in December, 1898. The contractors agreed to furnish the necessary right-of-way, one hundred feet wide, for the railroad, together with thirty acres of land at Gray's Point for terminal purposes, and all the land necessary for side tracks and station houses. A transfer incline was constructed at Gray's Point, and traffic exchanged by means of ferry across the

Mississippi River between the lessee, the carrier, and the Illinois Central Railroad Company, at Thebes, Ill. In 1905, upon the completion of the Southern Illinois and Missouri Bridge Company's bridge (Thebes Bridge), the terminal was established at Illmo, Mo., near the bridge, and about three miles of track between Illmo and Gray's Point was abandoned as main line and is now used as a spur. The Illmo yards were constructed in 1906 and 1907.

History of Capital Financing.

Syndicating, banking, and other financial arrangements.—The Gray's Point was promoted and financed by the carrier with the primary object in view of extending its lines to the Mississippi River. In the original construction, the contractors, Johnston Brothers and Faught, agreed to build 16.4 miles of main and 6.2 miles of side track, a total of 22.6 miles, for $13,500 per mile, in payment of which they accepted bonds of the par value of $339,000 at 90 per cent of par, equaling $15,000 per mile. The contractors also received $500,000 par value capital stock in addition to the bonds. All of the stock and $33,000 of the bonds ($1,444.45 per mile) were turned over to the carrier in consideration of its guarantee of the bonds, thus leaving to the contractors bonds of a total par value of $306,000, or $13,555.55 per mile of road constructed. All subsequent additions and betterments to the property have been made by the lessee, the carrier, in payment for which it has received $161,000 par value of first mortgage 5 per cent bonds and $838,000 par value of first refunding and extension 5 per cent mortgage bonds of the Gray's Point.

Capital stock.—The total authorized capital stock is $5,000,000, of which $500,000 was issued to the contractors, Johnston Brothers and Faught, under the contract dated August 23, 1897, hereinbefore mentioned, as part consideration for construction of the original road.

Funded debt.—First mortgage 5 per cent bonds amounting to $500,000 were issued under a mortgage dated December 1, 1897, maturing December 1, 1947. Of this issue, $339,000 par value were delivered to the contractors, Johnston Brothers and Faught,
115 under the contract of August 23, 1897, on a basis of $15,000 per mile for 22.6 miles of main and side tracks constructed by them. The remaining $161,000 par value of bonds were turned over to the carrier in payment of advances.

First refunding and extension mortgage bonds amounting to $838,000 were issued under a mortgage dated August 1, 1906, maturing August 1, 1956. The carrier received the entire issue of bonds in payment of advances from May, 1912, to April, 1915. The principal and interest of these bonds are guaranteed by the carrier.

Original Cost to Date.

The amount of $1,254,457.62, which, according to the accounting records of the Gray's Point, has been expended in the construction and improvement of its property, is made up of the following items:

90 per cent of par value of bonds issued to the contractors	$275,400.00
Cost of Illmo terminals	454,359.90
Other additions and betterments	551,293.16
Total	1,281,053.06
Less payments for land not used for common-carrier purposes	26,595.44
Net total	1,254,457.62

This total consists in its entirety of the par value of securities issued.

Cost of lands.—The Gray's Point reported cost of land, carrier and noncarrier, less $143.50 for parts of parcels sold, as $94,932.82, of which $3,824.69 were miscellaneous costs. The claimed land costs should be reduced to $82,002.39 by the exclusion of a total of $12,930.43, consisting of the following items:

Difference between amounts reported and amounts paid	$2,059.39
Land costs not allocated	630.00
Arbitrary pro-rate of overhead charges	10,221.04
Expenses of ejectment suit after operation of road began	20.00
Total	12,930.43

The following summary shows the classification of the lands according to the results of a check of the costs reported:

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Description.	Number of parcels.	Costs.
Lands devoted wholly to carrier purposes; owned:		
Costs supported by the accounting records.	37	$45,100.20
Costs not supported by the accounting records	40	10,450.25
Less—proceeds from part parcels sold	..	143.50
Lands devoted wholly to noncarrier purposes; owned:		
Cost supported by the accounting records.	41	26,595.44
Donated lands	1	
Total	42	26,595.44

The details of the item of $3,824.69, representing miscellaneous land costs, as verified by us, are summarized below:

Description.	Applicable to— Carrier lands.	Non-carrier lands.	Grand total.
Recording costs	$71.98	$36.37	$108.35
Salaries and expenses of way agents, etc.	1,053.38	1,274.52	2,327.90
Other damages	258.90	.....	258.90
Special counsel fees and court costs.	926.95	.....	926.95
Miscellaneous	197.85	4.74	202.59
Total	2,509.06	1,315.63	3,824.69

Leased Railway Property.

The entire property of the Gray's Point is leased to the carrier for sole operation under a contract dated November 5, 1897, for a period of fifty years. The contract was amended August 1, 1906, and the date of expiration extended to 1956. The carrier is granted the right under the terms of the contract to sublet to other carriers any or all of the property leased. The consideration named in the original lease is the carrier's guarantee of principal and interest of $500,000 first mortgage 5 per cent bonds of the Gray's Point, and the payment of interest thereon. The amended contract provides for the continuation of this guarantee as well as the further guarantee of principal and interest of not to exceed $4,000,000 of first refunding and extension fifty-year 5 per cent bonds dated August 1, 1906, and the payment of interest thereon. There are $1,338,000 of bonds outstanding, and the interest accrued for the year ending June 30, 1915, amounted to $66,112.50. The lessee pays all operating expenses and taxes.

The Chicago and Eastern Illinois Railroad Company, and St. Louis Iron Mountain and Southern Railway Company, as tenants of the carrier, have trackage rights over the line of the Gray's Point as follows:

117 Chicago and Eastern Illinois Railroad Company—between Illmo and Rock View.

St. Louis Iron Mountain and Southern Railway Company—between Illmo and Delta.

Statement of Income.

For Year Ended June 30, 1915, and for Period from December, 1898, to June 30, 1915.

	Year.	Period.
Income from lease of road	$66,112.50	$483,191.66
Interest on funded debt	66,112.50	483,191.66
Balance to profit and loss	0	0

The Paragould.

Development of Fixed Physical Property.

All of the property of the Paragould, with the exception of the original line, was acquired by construction. The original line, extending eastward from Paragould, a distance of approximately four miles, was built by the Paragould Stave Manufacturing Company, largely for the purpose of getting out timber, and was acquired by the Paragould from the incorporators. The line was extended about four miles to Bertig, Ark., in 1888, and the entire eight miles was changed to standard gauge in 1893. Various extensions were subsequently completed and placed in operation, as follows:

January 1, 1893, Bertig, Ark., to Cardwell, Mo.	2 miles
October 25, 1897, Cardwell, Mo., to Hornersville, Mo.	11 miles
April 5, 1903, Hornersville, Mo., to Chickasawba, Ark.	15 miles
January 27, 1907, Chickasawba, Ark., to Blytheville, Ark..	1 mile
Total	29 miles

History of Capital Financing.

Syndicating, banking, and other financial arrangements.—The original line, extending from Paragould eastward approximately four miles, was conveyed to the Paragould in October, 1887, $10,000 of capital stock being issued therefor. In 1888 the Paragould issued $25,000 par value first mortgage 7 per cent bonds, and turned them over to the Arkansas (predecessor of the carrier) in payment of advances totaling $6,500 cash, and $18,782.74 for materials and labor, for reconstruction of the original four miles of narrow gauge tram road, and extending the line to Bertig, Ark.

On May 27, 1893, the $10,000 of capital stock was turned over to the carrier "for value received," although the records indicate the transaction was a settlement of accrued interest on the $25,000 of bonds owned by the carrier.

118 No accounting records of the Paragould were found covering the period prior to July 1, 1895, on which date opening entries were made, recording the issuance of $40,000 additional capital stock and $50,000 of first mortgage 6 per cent bonds, dated July 1, 1893. The disposition of these stocks and bonds had previously been provided for by contracts between the carrier and J. F. Hasty & Sons, hereinafter referred to as the contractors, dated June 14, 1893, and between the Paragould and the contractors, dated August 19, 1893. Under these agreements the contractors standard gauged the original eight miles of road and built an extension of two miles to Cardwell, Mo. In payment for this work the contractors received the $40,000 additional issue of capital stock and all of the bonds. $15,000 of stock was turned over to the carrier, and the contractors retained the remaining $25,000. Of the $50,000 of bonds

issued, $25,000 were used to retire an equal amount of the old bonds owned by the carrier, and the remaining $25,000 were retained by the contractors.

In November, 1897, the Paragould issued an additional $50,000 of capital stock and $50,000 of bonds under the mortgage of July 1, 1895, in connection with the extension from Cardwell to Hornersville. This extension was financed and constructed by the carrier and the contractors (under the name of "Brown-Howard & Company"). The necessary contracts were executed August 25, 1897, by the terms of which the contractors were to receive the $50,000 of stock and $50,000 of bonds.

The records show that the carrier advanced $26,937.50 in cash and materials on account of this construction, and the contractors advanced $16,562.50, making a total of $43,500, which, according to the records, constituted the cost of the extension. In settlement, the carrier received $31,000 of stock and a like amount of bonds, and the contractors $19,000 of stock and a like amount of bonds. In October, 1912, the carrier acquired all the outstanding stock and bonds not previously owned by it. The carrier has made advances to the Paragould from September, 1901, to June 30, 1915, aggregating $156,735.48, for operating deficits and for construction and additions and betterments, including the extensions from Hornersville, Mo., to Blytheville, Ark. $411,000 of the advances were liquidated by an equal amount of first and refunding mortgage 5 per cent bonds in January, 1914; $43,977.94 were cancelled by the carrier in March, 1914, and the balance of $1,757.54 is carried in an open account.

The Paragould also issued $100,000 of the first and refunding mortgage bonds to the carrier in January, 1914, in exchange for the first mortgage 6 per cent bonds of July 1, 1893, which were cancelled.

Capital stock.—The total authorized capital stock is $5,000,000, of which $100,000 was issued in the acquisition of the original four miles of line, and the extension thereof. All of this stock is owned by the carrier.

Funded debt.—First mortgage 7 per cent bonds amounting to $25,000 were issued in 1888 and turned over to the Arkansas for construction advances. The entire issue was retired in 1895 by an equal amount of first mortgage 6 per cent bonds.

First mortgage 6 per cent bonds amounting to $100,000 were issued under a mortgage dated July 1, 1895. Of these bonds $25,000 were exchanged for an equal amount of the old issue, and
119 $75,000 were issued in connection with the construction of extensions. The entire issue was retired in January, 1914, by a like amount of first and refunding mortgage 5 per cent bonds.

First and refunding mortgage 5 per cent bonds amounting to $511,000 were issued under a mortgage dated January 1, 1914, maturing January 1, 1944, Guaranty Trust Company of New York, trustee. The mortgage provides for an authorized issue of $5,000,000 of these bonds. Of the bonds issued, $411,000 were turned over to the carrier in part payment of construction advances, and $100,000 were also given the carrier in exchange for a like amount of first mortgage 6 per cent bonds, which were cancelled.

Non-negotiable debt.—The Paragould has incurred non-negotiable debt to affiliated companies in the aggregate amount of $183,672.98, as follows:

In connection with the construction of the extension from Cardwell, Mo., to Hornersville, Mo., the carrier advanced to the Paragould $26,937.50 in cash and materials. In settlement, the carrier received $31,000 par value of capital stock and a like amount of first mortgage 6 per cent bonds.

Since 1901 the carrier has advanced the Paragould $456,735.48, of which $411,000 were paid in January, 1914, in first and refunding mortgage 5 per cent bonds; $43,977.94 were cancelled, and the balance of $1,757.54 is carried in an open account.

Short-term notes.—During the period from 1895 to July, 1901, the Paragould issued short-term notes totaling $36,254.31. The records do not show the considerations received. All of the notes were paid prior to June 30, 1915.

The carrier secured control of the Paragould on May 27, 1893, and since that date has controlled the financing of the road.

Results of Corporate Operations.

Income account.—The Paragould included in miscellaneous income charges a total of $16,039.37, which the records indicate covered expenditures for additions and betterments to its property.

Profit and loss account.—An analysis of the profit and loss account of the Paragould follows:

Credits.

Cancellation of indebtedness by the carrier	$43,977.94
Profit on county warrants	220.44
Unclaimed wages	376.85
Miscellaneous	60.71
Total	44,635.94

Debits.

Debit balance transferred from income		$131,570.29
	Expenses—first and refunding mortgage bonds	1,580.25
120	Loss on retired road and equipment	5,073.79
	Miscellaneous	1,020.79
	Total	139,245.12
	Balance to debit of profit and loss account on valuation date	94,609.18

The credit item of $43,977.94 represents advances made by the carrier to the Paragould, and used by the latter to settle liabilities occasioned by net losses in operation up to January 1, 1914, on

which date the property was leased to the carrier. In March, 1914, the carrier cancelled the indebtedness.

Investment in Road and Equipment.

The Paragould's stated investment in road and equipment is $518,148.36. Included in this total, however, is $38,324.60 representing the cost of non-carrier lands. After deducting this amount, the investment account would stand at $479,823.76.

The carrier has made advances to the Paragould aggregating $456,735.48, for operating deficits and for construction and additions and betterments, which it is known, include the extension from Hornersville to Blytheville, Mo., hereinbefore recorded as "other expenditures $200,460.90," and which, in all probability, includes the item hereinbefore recorded as "Expenditures for additions and betterments (net) —$117,687.46." In liquidation of the advances made by the carrier, it has accepted $411,000 par value of first and refunding mortgage 5 per cent bonds; $43,977.94 were cancelled by the carrier, and the balance of $1,757.54 is carried in an open account.

It would, therefore, appear that much more than 40 per cent, as hereinbefore affirmatively shown, if not in fact all, of the investment account is made up of the par value of securities issued.

Original Cost to Date.

The amount of $462,687.73, which, according to the accounting records of the Paragould, has been expended in the construction and improvement of its property, is made up of the following items:

Capital stock issued for original line	$10,000.00
Bonds issued for reconstruction and extension to Bertig, Ark.	25,000.00
Capital stock retained by contractors in connection with standard gauging and the extension to Cardwell, Mo.	25,000.00
Bonds issued for standard gauging, and the extension to Cardwell, Mo.	25,000.00
Cost of extension to Hornersville, Mo.	43,500.00
Construction of extension to Blytheville, Ark.	200,460.90
Expenditures for additions and betterments charged to investment account	117,687.46
Expenditures for additions and betterments charged to income account	16,039.37
Total	462,687.73

121 The above total may be excessive in that it includes $25,000 par value of capital stock and $25,000 par value of bonds issued in connection with the standard gauging and extension of the line to Cardwell, Mo. The actual cost of this work can not be ascertained.

It also includes the cost of 61.76 acres of land used for noncarrier purposes, which, as supported by the accounting records, was $38,324.60.

Cost of lands.—The Paragould reported cost of land owned, used and not used for carrier purposes, less $421.42 for parts of parcels sold, as $47,467.95, of which $1,343.38 were miscellaneous costs. The claimed land costs should be reduced to $46,666.66 by the exclusion of a total of $801.29, consisting of the following items:

Costs of abandoned or otherwise disposed of land, not reported on inventory	$278.05
Payment made by citizens of Blytheville	405.00
Miscellaneous	118.24
Total	801.29

The following summary shows the classification of the lands according to the results of a check of the costs reported:

Classification.	Parcels.	Cost.
Lands devoted wholly to carrier purposes; owned:		
Costs supported by the accounting records:		
Lands acquired by purchase	27	$5,551.50
Lands acquired by condemnation	6	487.50
Miscellaneous costs	..	425.23
Total	33	6,464.23
Costs not supported by the accounting records:		
Substantial considerations recited in deeds	18	733.73
Aids and nominal considerations recited in deeds	57	.....
No deeds or other conveyance	22	.....
Total	97	733.73
Less proceeds from part parcels sold verified	..	421.42
Land devoted partly to carrier and partly to non-carrier purposes, owned:		
Costs supported by the accounting records:		
Lands acquired by purchase	3	1,550.00
Miscellaneous costs	..	15.50
Total	3	1,565.50
Costs not supported by the accounting records:		
Nominal considerations recited in deeds	1	.....

Lands devoted wholly to non-carrier purposes; owned:

Costs supported by the accounting records:		
Lands acquired by purchase	5	37,421.95
Miscellaneous costs	..	902.65
Total	5	38,324.60

The lands owned and devoted partly to carrier and partly to non-carrier purposes, and the lands owned and devoted wholly to non-carrier purposes, are located in Arkansas only. The following summary shows the division by states of the foregoing result of a check of the costs reported in connection with the lands owned and devoted wholly to carrier purposes:

In Arkansas:

	Parcels.	Cost.
Costs supported by the acccounting records:		
Lands acquired by purchase	21	$4,746.50
Lands acquired by condemnation	6	487.50
Miscellaneous costs	..	423.08
Total	27	5,657.08
Costs not supported by the accounting records:		
Substantial considerations recited in deeds	7	310.00
Aids and nominal considerations recited in deeds	25	.....
No deeds or other conveyance	10	.....
Total	42	310.00
Less proceeds from part parcels sold—verified	..	421.42

In Missouri:

Costs supported by the accounting records:		
Lands acquired by purchase	6	805.00
Miscellaneous costs	..	2.15
Total	6	807.15

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Costs not supported by the accounting records:		
Substantial considerations recited in deeds	11	423.75
Nominal considerations recited in deeds	32	.....
No deeds or other conveyance	12	.....
Total	55	423.75

The details of the item of $1,343.38, representing miscellaneous land costs, are summarized below:

Item.	Carrier lands.	Non-carrier lands.	Partly carrier and partly non-carrier.	Total Arkansas.	Total Missouri.	Grand total.
Recording costs:						
Arkansas	$56.35	$28.50	$.....	$84.85	$....	$.....
Missouri	2.15	.....	.....	.....	2.15	87.00
Salary and expenses of way agents, etc.						
Arkansas	55.10	485.50	.....	540.60	....	540.60
Other damages:						
Arkansas	93.87	19.70	.....	113.57	....	113.57
Cost of removing or relocating property:						
Arkansas	80.00	250.00	.....	330.00	....	330.00
Special counsel fees and court costs:						
Arkansas	116.56	.....	.....	116.56	....	116.56
Miscellaneous:						
Arkansas	21.20	118.95	15.50	155.65	....	155.65
Total	425.23	902.65	15.50	1,341.23	2.15	1,343.38

Leased Railway Property.

The entire property of the Paragould is leased to the carrier for sole operation under a contract dated January 1, 1914, for a period of thirty years. The lessee is granted the right under the contract to sublet to other carriers any or all of the property leased. The lessor is required to make all betterments or extensions as required, but the lessee will guarantee the obligations incurred therefor, and assume any loss suffered, and advance the funds for the same, if necessary. The lessee has the option of acquiring all the property, rights, and franchises of the lessor upon payment of all bonds and other obligations outstanding at the time of purchase.

124 The rental consideration is the guarantee of principal and interest of not to exceed $5,000,000 of first and refunding mortgage 5 per cent bonds, dated January 1, 1914, and the payment of the interest thereon. There were $511,000 of bonds outstanding as of June 30, 1915, all owned by the carrier, and the annual interest totals $25,550. The mortgage of the Paragould dated January

1, 1914, provides for the redemption of any or all of the bonds on any interest date at a premium of 5 per cent, and the lease provides for such redemption only upon consent of the lessee. The carrier also agrees to assume in its income account any discount suffered in the sale of the bonds.

Statement of Income.

For Year Ended June 30, 1915, and for Period July 1, 1895, to June 30, 1915.

	Year.	Period.
Operating income:		
Railway operating revenues	.....	$1,076,677.40
Railway operating expenses	.....	891,667.04
Net revenue from railway operations	.....	185,010.36
Railway tax accruals	.....	38,255.94
Total	.....	146,754.42
Nonoperating income:		
Hire of equipment	.....	3,766.50
Joint facility rent income	.....	15,885.27
Income from lease of road	$25,550.00	38,325.00
Miscellaneous income	.....	5,262.01
Total	25,550.00	63,238.78
Gross income	25,550.00	209,993.20
Deductions from gross income:		
Hire of equipment	.....	59,400.92
Joint facility rents	.....	3,315.00
Interest on funded debt	$25,550.00	142,325.00
Interest on unfunded debt	.....	119,703.27
Miscellaneous income charges	.....	16,819.30
Total	25,550.00	341,563.49
Balance transferred to debit of profit and loss	.....	131,570.29

The Central.

Development of Fixed Physical Property.

The property of the Central was all acquired by construction. The original line from England to Ryan was completed and opened for operation in 1901. The construction of the extension from Ryan to Stuttgart and the branch from Rice Junction to Hazen, as well as improvement of the original line, was commenced in 1910, com-

pleted October 22, 1911, under a contract with Thompson and Scott, of St. Louis, Mo., dated May 12, 1910. This contract was known as "force account contract," and was based on a charge by the
125 contractors of 15 per cent upon labor and materials; the contractors to furnish all of the labor and such materials as the Central did not elect to furnish. All payments were guaranteed by the carrier.

History of Capital Financing.

Capital stock.—From the obtainable records, it appears that capital stock to the par value of $100,000 had been authorized before June 30, 1910, of which but $25,000 had been issued. In May, 1909, Judge R. M. Foster, of St. Louis, Mo., acquired the outstanding capital stock of $25,000, and on November 10, 1909, sold it to F. H. Britton, representing the carrier, for $45,000. In addition, Foster agreed to provide certain rights-of-way and render certain services. On June 30, 1910, the property was leased to the carrier. The books of account were opened June 30, 1910, with a liability for the entire $100,000 of authorized capital stock and a corresponding asset representing investment in road and equipment. Of this $100,000 capital stock, $75,000 was issued on the same day to F. H. Britton for the carrier as a stock dividend. Prior to the opening of the books, by amendments to the articles of incorporation filed February 16, 1910, and June 8, 1910, the authorized capital stock was increased to $1,100,000. On June 26, 1911, the carrier, through F. H. Britton, paid $50,000 as a 5 per cent subscription on the increased issue of $1,000,000, and received 500 shares of the capital stock. The carrier recorded the acquisition of the entire $150,000 in July, 1911, by the cancellation of notes given by F. H. Britton for $95,000 advanced to him as agent to purchase the stock.

Funded debt.—First mortgage 5 per cent gold bonds amounting to $1,085,000 were issued under a mortgage dated July 1, 1910, maturing July 1, 1940, the St. Louis Trust Company, trustee, authorizing a total issue of $3,000,000. The bonds were issued to provide funds for building the extension from Ryan to Stuttgart, and the branch from Rice Junction to Hazen.

The entire issue was sold to the Guaranty Trust Company of New York in June, 1911, and February, 1912, at 90 per cent of par, and the discount of $108,500 was assumed by the carrier under the terms of the lease of July 1, 1910.

Short-term notes.—In 1910 and 1911 the Central borrowed $195,000 in cash, and issued its short-term notes therefor, $160,000 at 5 per cent to the Mechanics American National Bank of St. Louis, and $35,000 at 6 per cent to the carrier. These notes were paid at maturity.

Of the total cash secured from sale of stock, bonds, and on notes, aggregating $1,221,500, $970,139.96 were expended for construction and additions and betterments, $195,000 in retirement of notes, and the balance, $56,360.04, turned over to the carrier. This sum, plus $108,500 discount on bonds, which was assumed by the carrier, or $164,860.04, is still due the Central by the carrier.

Original Cost to Date.

The amount of $995,139.96, which, according to the accounting records of the Central, has been expended in the construction
126 and improvement of its property, is made up of the following items:

Construction of extension and branch	$947,682.04
Additions and betterments	22,457.92
Original stock issue	25,000.00
Total	995,139.96

This figure may be less than the actual cost, in that the cost of 9 miles of line (less rails which were reserved to the seller), at the time the carrier secured control, might have been in excess of the outstanding $25,000 of capital stock.

The item of $947,682.04 includes $33,172.80 of interest during construction, of which $11,185.47 represented accrued interest on bonds.

The item of $22,457.92 for additions and betterments is made up chiefly of charges for additional ballast, side tracks, and the like.

Cost of lands.—The Central reported cost of lands owned and devoted to carrier purposes, less proceeds from part parcels sold, as $44,984.87.

The claimed land costs should be reduced to $39,978.68 by the exclusion of a total of $5,006.19, consisting of the following items:

Payments for land made by citizens	$5,726.00
Forfeited options	110.00
Cost of entire parcels of land sold prior to dedication to public use	1,400.00
Amount realized from sale of entire parcels prior to dedication to public use	2,027.00*
Cost of land omitted by carrier	250.00*
Miscellaneous	47.19
Total	5,006.19

The following summary shows the classification of the lands according to the results of a check of the costs reported:

Classification	Parcels.	Cost.
Lands devoted wholly to carrier purposes; owned:		
Costs supported by the accounting records:		
Lands acquired by purchase	66	$30,784.49
Lands acquired by condemnation	4	4,275.70
Miscellaneous costs	..	5,458.49
Total	70	40,518.68

* Indicates addition.

Costs not supported by the accounting records:

	Substantial considerations recited in deeds..	12	1,160.00
127	Aids or nominal deed considerations.....	35	.....
	No consideration stated in deed.....	2	.....
	No deed or other conveyance.....	8	.....
	Total	57	1,160.00
	Less proceeds from part parcels sold.....	..	1,700.00

The details of the item of $5,458.49, representing miscellaneous land costs, are summarized below:

Recording costs	$171.70
Salary and expenses of way agents, etc.....	3,325.99
Other damages	42.50
Cost of removing or relocating property.....	639.91
Special counsel fees and court costs.....	1,100.25
Miscellaneous	178.14
Total	5,458.49

Investment in Road and Equipment.

As hereinbefore stated, no accounting records of the Central for the period prior to June 30, 1910, are obtainable. On that date the original issue of $25,000 of capital stock, and the $75,000 issued in June, 1910, as a stock dividend, were taken up as liabilities, and the total, $100,000, concurrently charged to investment in road and equipment.

The Central's classification of the total investment in road, by primary accounts, including an arbitrary division of the item of $100,000, and actual charges for the remainder, follows:

Road:

Engineering	$14,620.43
Land for transportation purposes.....	51,935.66
Grading	178,325.00
Bridges, trestles and culverts.....	50,663.22
Ties	105,811.25
Rails	133,183.46
Other track material.....	77,720.72
Ballast	122,802.28
Track laying and surfacing.....	142,249.13
Right-of-way fences	16,464.89
Crossings and signs.....	2,650.62
Station and office buildings.....	30,612.21
Water stations	14,978.94
Fuel stations	69.17
Shops and engine houses.....	149.01
Telegraph and telephone lines.....	2,868.50

	Signals and interlockers	22.89
	Miscellaneous structures	12,524.99
	Roadway small tools	1,661.46
	Assessment for public improvements	281.00
	Revenue and operating expenses during construction	16,020.00
128	Other expenditures—Road	32,884.28
	Total	1,008,499.11
	General Expenditures:	
	Law	3,145.50
	Stationery and printing	652.79
	Taxes	4,472.03
	Interest during construction	33,172.80
	Other general expenses	20,197.73
	Total	61,640.85
	Grand total	1,070,139.96

The item of $75,000, being the par value of capital stock issued in June, 1910, as a stock dividend, should apparently be eliminated, as it is not properly chargeable to investment in road and equipment. If this deduction were made, the investment account would be reduced to $995,139.96.

Leased Railway Property.

The entire property of the Central is leased to the carrier for sole operation under a contract dated July 1, 1910, for a period of thirty years. The lessee is granted the right under the terms of the contract to sublet to other carriers any or all of the property leased. The lessor is required to make all betterments and extensions, but the lessee will guarantee the obligations incurred thereby, or advance the necessary funds at 6 per cent interest per annum.

The carrier has the option of acquiring all of the property, rights, and franchises of the Central upon assuming payment of all outstanding bonds and other obligations.

The rental consideration is the guarantee of principal and interest of not to exceed $3,000,000 of first mortgage 5 per cent bonds dated July 1, 1910, and the payment of interest thereon. There were $1,085,000 of bonds outstanding on date of valuation, and the annual interest totaled $54,250.

The lease was amended May 18, 1911, to provide for the sale or disposition of the bonds at a price satisfactory to the carrier, and as a further consideration the lessee assumes any discounts suffered thereon.

Statement of Income.

For Year Ended June 30, 1915, and for Period from October, 1911, to June 30, 1915.

	Year.	Period.
Income from lease of road	$54,250.00	$195,361.75
Interest on funded debt	54,250.00	195,361.75
Balance to profit and loss	0	0

129 Predecessor Companies.

St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri.

St. Louis, Arkansas and Texas Railway Company in Arkansas and Missouri, herein called the Arkansas, was a corporation of the states of Arkansas and Missouri. There were two corporations of this name; the first was incorporated on April 15, 1886. On August 18, 1887, it was consolidated with the Arkansas and Southern Railway Company (to which it had deeded that part of its property in Arkansas a few days previously) to form the second corporation of the same name. While a new corporation was actually formed in this consolidation, no new books were opened, the accounting records of the first company being continued. For the purpose of this report, the two companies are considered as one.

The Arkansas was incorporated at the instance of a bondholders' committee, which had purchased the property and franchises of the Texas and St. Louis Railway Company in Missouri and Arkansas, herein called the St. Louis, at foreclosure sale. The members of this committee also acted as a committee of bondholders of the Texas and St. Louis Railway Company in Texas, acquiring the property and franchises of that company at foreclosure sale, and conveyed the same to the St. Louis, Arkansas and Texas Railway Company in Texas, herein called the St. Louis & Texas, which was incorporated on January 29, 1886.

The same interests controlled both the Arkansas and the St. Louis & Texas, and the properties were operated as one system.

The Arkansas owned and operated a standard gauge railroad of about 582 miles, which extended from Bird's Point, Mo., to the Arkansas-Texas state line at Texarkana, with the following branches:

Lilbourn, Mo., to New Madrid, Mo.
Malden, Mo., to Delta, Mo.
McNeil, Ark., to Magnolia, Ark.
Altheimer, Ark., to Argenta, Ark.
Lewisville, Ark., to Shreveport, La.

Traffic was exchanged with the St. Louis, Iron Mountain and Southern Railway Company at Delta, Mo., and with the Illinois Central Railroad Company, at Cairo, Ill., a car ferry being operated between Cairo, Ill., and Bird's Point, Mo.

The Gould interests appear to have come into control of the property in 1888. These interests retained control of the carrier, which was incorporated January 16, 1891, to acquire the property and franchises of the Arkansas, which was sold at foreclosure sale on October 20, 1890.

Corporate History.

The first Arkansas company was incorporated on April 15, 1886, under the laws of Missouri, for the purpose of acquiring the property, rights and franchises of the St. Louis, which had been sold at foreclosure sale February 27, 1886, to a bondholders' committee.

On August 4, 1887, it sold that part of its property in the
130 state of Arkansas to the Arkansas and Southern Railway Company, subject to existing mortgages, for $1 and other valuable considerations. The Arkansas and Southern Railway Company was incorporated February 17, 1887, in the interest of the Arkansas, and in addition to acquiring the property of the first Arkansas company in Arkansas, as hereinbefore explained, it acquired the rights and franchises of the Shreveport and Arkansas Railway Company, and Little Rock and Eastern Railway Company on August 13, 1887, and August 15, 1887, respectively.

The Shreveport and Arkansas Railway Company was organized for the purpose of constructing a railroad from Shreveport, La., to the Arkansas-Louisiana state line in the direction of Lewisville, Ark.; the Little Rock & Eastern Railway Company for the purpose of constructing a railroad between Altheimer, Ark., and Argenta (North Little Rock), Ark. Both of these companies were organized in the interest of the Arkansas and Southern Railway Company, and no construction had been done by either up to the date of sale of their rights and franchises to that company. The proposed lines were constructed by the Arkansas in the following year.

On August 18, 1887, the first Arkansas company and the Arkansas and Southern Railway Company were consolidated to form the second Arkansas company. Articles of consolidation were filed in both Missouri and Arkansas.

On August 15, 1888, the Arkansas acquired the rights and franchises of the St. Louis, Arkansas & Texas Terminal Railway Company, which had been organized in the interest of the Arkansas for the purpose of constructing a road from Malden, Mo., to a point on the Mississippi River opposite Grand Tower, Ill. No construction work had been done up to the date of sale. The proposed line was constructed by the Arkansas as far as Delta, Mo., and opened for operation early in 1889.

On May 14, 1889, S. W. Fordyce was appointed receiver of the property and on June 23, 1889, A. W. Swanson was appointed co-receiver.

Under decree of foreclosure the property was sold on October 20, 1890, to Louis Fitzgerald, purchasing trustee (for a reorganization committee), who deeded the same to the carrier.

The receivers operated the property to June 1, 1891, when it was turned over to the carrier.

Development of Fixed Physical Property.

The owned mileage of the Arkansas was acquired as follows:

Reorganization:		
May 14, 1886, railroad of the St. Louis Bird's Point, Mo., to Texarkana, Ark.-Tex.	417 miles	429 miles
Lilbourn, Mo., to New Madrid, Mo.	5 miles	
McNeil, Ark., to Magnolia, Ark.	5 miles	
Construction:		153 miles
1888—Altheimer, Ark., to Argenta, Ark.	41 miles	
1888—Lewisville, Ark., to Shreveport, La.	60 miles	
1889—Malden, Mo., to Delta, Mo.	52 miles	
Total		582 miles

An important feature in the development of the road acquired from the St. Louis was the immediate change from narrow gauge to standard gauge. This work was completed October 18, 1886.

History of Capital Financing.

Syndicating, Banking, and Other Financial Arrangements.—The property of the St. Louis was sold at foreclosure sale to a bondholders' committee consisting of Wm. Mertens, Geo. Coppell, L. S. Wolff, M. Gernsheim, and J. W. Paramore. On May 14, 1886, the committee conveyed the property to the Arkansas.

The members of this committee, acting as representatives of the bondholders of the Texas and St. Louis Railway Company in Texas, hereinafter called the Texas, acquired the property of that company at foreclosure sale, and on May 11, 1886, conveyed it to the St. Louis & Texas.

This joint committee controlled the affairs of both the Arkansas and the St. Louis & Texas until December 26, 1888, when the sale of certain securities to the Mercantile Trust Company (acting as agent for Jay Gould and associates) enabled the Gould interests to play an important part in the affairs of this group of railroads. The financial affairs of the two companies were practically handled together, although each company assumed its proportion of liabilities incurred.

Under mortgage dated May 4, 1886, and maturing May 1, 1936, the Arkansas issued first mortgage 6 per cent gold bonds in the amount of $5,577,000. Under mortgage dated May 5, 1886, and maturing May 1, 1936, the St. Louis & Texas issued first mortgage 6 per cent gold bonds in the amount of $3,952,000. These two

bonds were deposited with the Central Trust Company of New York, trustee, to which the Arkansas and St. Louis & Texas had each conveyed its property by deed of trust. The Central Trust Company issued its "The St. Louis, Arkansas and Texas Railway Companies in Texas and in Arkansas and Missouri—first mortgage, 6 per cent gold certificates" of $1,000 par value each, to an amount ($9,529,000) equal to a total of the bonds of the two companies against which they were issued. These certificates bore interest from May 1, 1886, maturing May 1, 1936, and were equally secured by all the property of both the Arkansas and the St. Louis & Texas.

Under mortgage dated May 4, 1886, maturing May 1, 1936, the Arkansas issued second mortgage 6 per cent gold bonds in the amount of $5,577,000. Under mortgage dated May 5, 1886, maturing May 1, 1936, the St. Louis & Texas issued second mortgage 6 per cent gold bonds to the amount of $3,952,000. These two issues were deposited with the Mercantile Trust Company of New York,
trustee, to which the Arkansas and the St. Louis & Texas had
132 each conveyed its property (subject to the first mortgages previously mentioned) by deed of trust. The Mercantile Trust Company issued its "The St. Louis, Arkansas and Texas Railway Companies in Texas and in Arkansas and Missouri—second mortgage, 6 per cent gold certificates" of $1,000 par value each, to an amount ($9,529,000) equal to the total of the second mortgage bonds of the two companies against which they were issued. For three years from May 1, 1886, only such interest was payable on these certificates as "the earnings of the respective companies shall pay after providing for all prior charges and expenditures." These certificates were to mature May 1, 1936, and were equally secured by all the property of both the Arkansas and the St. Louis & Texas subject to the prior lien of the first mortgages.

Of the first mortgage 6 per cent gold certificates issued, $6,597,000 par value went to the joint purchasing committee for reorganization purposes. The remaining $2,932,000 of certificates were divided between the Arkansas and the St. Louis & Texas. The former received $1,716,000, and the latter $1,216,000. The $1,716,000 of first mortgage 6 per cent bond certificates held by the Arkansas were sold in December, 1886, and March, 1887, for $1,661,954.01, or at a discount of $54,045.99.

The entire issue ($9,529,000) of second mortgage certificates was turned over to the joint purchasing committee.

In May, 1886, the Arkansas issued $12,500,000 par value of capital stock and the St. Louis & Texas $9,520,000 of capital stock par value.

All of the capital stock of the Arkansas ($12,500,000) and $3,952,000 of that of the St. Louis & Texas was turned over to the joint purchasing committee, which retained $6,932,000 of that of the Arkansas and exchanged the remainder ($5,568,000) for the balance (a like amount) of that of the St. Louis & Texas.

How the securities issued to the purchasing committee were applied in satisfying the claims of the stockholders and bondholders of the St. Louis and of the Texas is not of record.

The Arkansas received $305,214.65 from the purchasing committee, and assumed liabilities in excess of other assets received amounting to $103,564.28. The St. Louis & Texas received $216,252.37 from the purchasing committee and other assets in excess of liabilities assumed amounting to $460,445.06.

Additional securities of $13,000 in capital stock, $13,000 in first mortgage certificates, and $13,000 in second mortgage certificates were to be issued for each mile of extensions.

Contracts were entered into with C. H. Smith & Company whereby that firm was to construct and equip the various extensions for $13,000 per mile in capital stock and $13,000 per mile of first mortgage certificates. The different branches were built on this basis, with the exception that for the branches built for the Arkansas, C. H. Smith & Company received capital stock of the St. Louis & Texas at the agreed rate per mile, a like amount of stock of the Arkansas having been turned over to the St. Louis & Texas in lieu thereof. This had the effect of keeping the additional capital stock of the Arkansas out of the hands of the public and investing the ownership of the majority of its stock in the St. Louis & Texas.

133 C. H. Smith & Company was created merely for the purpose of carrying out the plan outlined. It represented the interests controlling the Arkansas and the St. Louis & Texas, and while all the securities issued in accordance with the contracts were nominally turned over to C. H. Smith & Company, the first mortgage certificates were actually disposed of through agencies of the Arkansas and the St. Louis & Texas. The officials of these companies were in actual charge of the construction work, the cost of which was paid from the proceeds of the securities so disposed of.

In connection with the construction of these branches the following securities were issued to C. H. Smith and Company:

	St. Louis & Texas capital stock.	First mortgage certificates.	Total.
The Arkansas:			
Little Rock branch	$599,300	$599,300	$1,198,600
Shreveport branch	869,700	869,700	1,739,400
Malden branch	734,000	634,000	1,368,000
Total	2,203,000	2,103,000	4,306,000
The St. Louis & Texas:			
Sherman branch	1,495,000	1,495,000	2,990,000
Fort Worth branch	1,378,000	1,388,000	2,766,000
Hillsboro branch	585,000	585,000	1,170,000
Total	3,458,000	3,468,000	6,926,000

In accordance with a plan for extending the system, the first and second mortgages of both the Arkansas and the St. Louis & Texas

were extended to cover the proposed branches and additional bonds issued thereunder as follows:

The Arkansas—first mortgage 6 per cent gold bonds, due May 1, 1936:

October 20, 1887 Little Rock branch. Shreveport branch.	$1,560,000
August 15, 1888 Malden branch.	1,170,000

The Arkansas—second mortgage 6 per cent gold bonds, due May 1, 1936:

October 20, 1887 Little Rock branch. Shreveport branch.	1,560,000
August 15, 1888 Malden branch.	1,170,000

The St. Louis & Texas—first mortgage 6 per cent gold bonds due May 1, 1936:

November 15, 1886 Sherman branch.	1,495,000
134 May 4, 1887 Fort Worth and other branches.	7,540,000

The St. Louis & Texas—second mortgage 6 per cent gold bonds, due May 1, 1936:

November 15, 1886 Sherman branch.	1,495,000
May 4, 1887 Fort Worth and other branches.	7,540,000

The first mortgage bonds so issued by both companies were deposited with the Central Trust Company of New York, trustee, and its "The St. Louis, Arkansas and Texas Railway Companies in Texas and in Arkansas and Missouri—first mortgage 6 per cent gold certificates" issued against them as follows:

On account of the Arkansas:

Little Rock and Shreveport branches	$1,469,000
Malden branch	734,000
Alleged additional main line mileage	17,400
Total	2,220,400

On account of the St. Louis & Texas:

Sherman branch	$1,495,000
Fort Worth branch	1,388,000
Hillsboro branch	585,000
Lufkin branch	1,170,000
Alleged additional main line mileage	21,600
Total	4,659,600

The second mortgage bonds so issued by both companies were deposited with the Mercantile Trust Company of New York, trustee, and its "The St. Louis, Arkansas and Texas Railway Companies in Texas and in Arkansas and Missouri—second mortgage 6 per cent gold certificates" issued against them as follows:

On account of the Arkansas:

Little Rock and Shreveport branches	$1,469,000
Malden branch	734,000
Alleged additional main line mileage	17,400
Total	2,220,400

On account of the St. Louis & Texas:

Sherman branch	1,495,000
Fort Worth branch	1,388,000
Hillsboro branch	585,000
Lufkin branch	1,170,000
Alleged additional main line mileage	21,600
Total	4,659,600

The additional capital stock so issued was disposed of as follows:

135 The Arkansas:

Issued to the St. Louis & Texas in lieu of St. Louis & Texas stock delivered to C. H. Smith & Company	$2,203,000

The Texas:

Issued to C. H. Smith & Company		5,661,600
Account of the Sherman branch	$1,495,000	
Account of the Hillsboro branch	585,000	
Account of the Fort Worth branch	1,378,000	
Account of the Arkansas branch	2,203,000	
Issued in purchase of Kansas & Gulf Short Line Railroad (Lufkin branch)		900,000
Unaccounted for		277,500
Total		6,838,500

The $277,500 of St. Louis & Texas capital stock shown as unaccounted for was actually issued and outstanding at the date of reorganization, but its issue was not recorded on the books of the St. Louis & Texas. In addition to the additional stock of the Arkansas shown above, $70,000 par value was issued to the stockholders of the Arkansas & Southern Railway Company in the consolidation of August 18, 1887.

The additional first and second mortgage certificates so issued were disposed of as follows:

First mortgage certificates:

On account of the Arkansas:

Issued to C. H. Smith & Company		$2,103,000.00
Account of the Little Rock branch	$599,300	
Account of the Shreveport branch	869,700	
Account of the Malden branch	634,000	
Given as bonus in sale of second mortgage certificates and capital stock of the St. Louis & Texas to the Mercantile Trust Company (trustee) as per contract of December 26, 1888		100,000.00
Sold for cash		15,840.00
		2,218,840.00
Discount		1,560.00
		2,220,400.00

On account of the St. Louis & Texas:

Issued to C. H. Smith & Company		3,468,000.00
Account of the Sherman branch	$1,495,000	
Account of the Fort Worth branch	1,388,000	
Account of the Hillsboro branch	585,000	
Issued in purchase of Lufkin branch		220,000.00
Sold for cash		936,286.67
		4,624,286.67
Discount		35,313.33
		4,659,600.00

Second mortgage certificates:

On account of the Arkansas:

Sold to the Mercantile Trust Company of New York, trustee, contract of December 26, 1888..... $2,220,400.00

136 On account of the St. Louis & Texas:

Sold to the Mercantile Trust Company of New York, trustee, contract of December 26, 1888..... 4,659,600.00

Under the contract of December 26, 1888, the following securities were sold to the Mercantile Trust Company of New York, trustee, for Jay Gould and associates, for $2,010,000:

First mortgage certificates issued on account of the Arkansas	$100,000
Second mortgage certificates issued on account of the Arkansas	2,220,400
St. Louis & Texas capital stock	900,000
Second mortgage certificates issued on account of the St. Louis & Texas	4,659,600
	7,880,000

In final settlement the proceeds were reduced to $1,949,288.47, due to adjustment between the parties, of which $1,320,029.08 was credited to the St. Louis & Texas, and the remainder, $629,259.39, to the Arkansas.

The first mortgage certificates issued to C. H. Smith & Company were disposed of as follows:

Issued on account of the Arkansas:

Cash	$1,775,723.34
Discount	91,276.66
	1,867,000.00
Unaccounted for	236,000.00
	2,103,000.00

Issued on account of the St. Louis & Texas:

Cash	$3,323,693.32
Discount	144,306.68
	3,468,000.00

Obtainable records of C. H. Smith & Company indicate that the following amounts were actually expended in the construction and equipment of the various branches as follows:

The Arkansas		$1,585,546.32
Little Rock Branch	$530,263.49	
Shreveport branch	749,771.48	
Malden branch	305,511.35	
The St. Louis & Texas		3,254,803.40
Sherman branch	1,295,542.89	
Fort Worth branch	1,397,138.02	
Hillsboro branch	562,122.49	
Grand total		4,840,349.72

In the acquisition of certain equipment for the combined properties and the payment of $346,000 in cash to the companies, the Arkansas and the St. Louis & Texas jointly issued equipment trust notes to an aggregate amount of $2,415,116, which included $696,638.04 of interest. The liability for these notes was taken
137 up on the books of the Arkansas. The St. Louis & Texas was charged with one-half through the medium of a general account. These notes were issued for the following considerations:

Equipment	$1,372,077.96
Cash	346,400.00
	1,718,477.96
Interest included in face of notes	696,638.04
	2,415,116.00

All of the interest was charged to investment in road and equipment account of the respective companies.

The Arkansas and receivers retired $648,541.72 of the notes, leaving a balance of $1,766,574.28 outstanding, of which the reorganization committee subsequently retired $1,189,0[illegible].09 for $1,026,323.94 cash. The difference, $162,753.15, represented interest included in the face of notes unaccrued at date of payment. The remaining $577,497.19 of unpaid notes were taken up on the books of the carrier and of the Southwestern of Texas, each company assuming one-half of the liability.

Excluding renewals, the Arkansas issued short-term notes for $3,782,449.85 from June 1, 1886, to May 13, 1889, of which $2,588,000 was for cash received and $1,194,449.85 was for materials and supplies. The records show that all of these notes were retired prior to reorganization.

The receivers issued series A and B certificates aggregating $287,668.41 in the purchase of material and to provide for cash requirements. Interest on these certificates totaled $10,429.26; the entire amount was paid by the reorganization committee.

The total capital liability of the Arkansas at date of reorganization was $32,422,042.69 as follows:

Capital stock	$14,773,000.00
First mortgage 6 per cent certificates	7,797,400.00
Second mortgage 6 per cent certificates	7,797,400.00
Equipment trust obligations	1,766,574.28
Receivers' certificates	287,668.41
Total	32,422,042.69

The first and second mortgage bonds are not included in the above tabulation; only the actual certificates issued against them being considered, as they represented the actual outstanding liability. All of the above securities were actually outstanding.

Capital stock.—$14,773,000 of capital stock was issued as follows:

To the reorganization committee of the St. Louis	$12,500,000
To the stockholders of the Arkansas & Southern Railway Company	70,000
To C. H. Smith & Company	2,203,000
	14,773,000

138 *Funded debt.*—The funded debt was issued and retired as follows:

	Issued.	Retired.	Outstanding.
First mortgage certificates	$7,797,400	$.....	$7,797,400.00
Second mortgage certificates	7,797,400	.....	7,797,400.00
Equipment trust obligations	2,415,116	648,541.72	1,766,574.28
	18,009,916	648,541.72	17,361,374.28

Receiver's certificates.—As hereinbefore stated, the receivers issued a total of $287,668.41 of receiver's certificates, all of which were paid by the reorganization committee.

Increase in securities in reorganization.—The following tabulation shows the increase in securities resulting from the reorganization of the St. Louis and the formation of the Arkansas:

The St. Louis.	Security.	The Arkansas.	Increase.	Decrease.
$5,650,000.00	Capital Stock	$12,500,000	$6,850,000.00	.....
11,180,000.00	Funded Debt	9,438,000	.....	$1,742,000.00
611,345.61	Receiver's certificates	.....	.....	611,345.61
17,441,345.61		21,938,000	6,850,000.00	2,353,345.61
	Net increase		4,496,654.39	

Aids, Gifts, Grants, and Donations.

The city of Shreveport, La., in 1887, contributed $40,000 in the aid of construction of the Shreveport branch. The donations of land to the Arkansas are included in the donations of land to the carrier and considered in the report of the carrier.

Results of Corporate Operations.

A summary statement of the income account of the Arkansas for the period from May 1, 1886, to May 31, 1891, is as follows:

Railway operating revenues		$10,528,317.19
Railway operating expenses		8,669,821.60
Net revenue from railway operations		1,858,495.59
Railway tax accruals		206,978.92
Total operating income		1,651,516.67
Non-operating income		113,631.71
Gross income		1,765,148.38
Deductions from gross income:		
Interest on funded debt	$1,168,155.80	
Interest on unfunded debt	27,877.57	
Miscellaneous income charges	622,018.67	
Total		1,818,052.04
Net deficit transferred to profit and loss		52,903.66

139 No interest was accrued on bond certificates subsequent to appointment of the receiver.

Profit and loss.—The debit balance ($52,903.66) was the amount transferred from income account. Had interest been accrued on outstanding bond certificates subsequent to the appointment of the receiver, the deficit would have been much larger.

General Balance Sheet Statement as of May 31, 1891.

Assets.

Investments:		
Investments in road and equipment	$29,794,810.61	
Miscellaneous physical property	27,327.95	
Investment in bonds	25,000.00	
Total		$29,847,138.56

Current assets:		
Miscellaneous accounts receivable:		
C. H. Smith & Company, contractors Grand Tower Branch	89,075.76	
The St. Louis & Texas, general account	1,450,529.30	
City of Shreveport	19,359.94	
Receivers of the St. Louis & Texas, general account	1,500.00	
Total		1,560,465.00
Unadjusted debits:		
Homer survey	1,154.39	
Discount on first mortgage certificates	100,000.00	
Discount on second mortgage certificates	1,591,140.61	
Bad debts	1,764.26	
Total		1,694,059.26
Grand total		33,101,662.82

Liabilities.

Capital liabilities:		
Capital stock		$14,773,000.00
Long-term debt:		
Funded debt unmatured	17,361,374.28	
Receiver's certificates	287,668.41	
Total		17,649,042.69
Current liabilities:		
Audited accounts and wages payable	1,516.46	
Miscellaneous accounts payable	287,184.76	
140		
Interest matured unpaid	356,640.00	
Unmatured interest accrued	37,052.57	
Total		682,393.79

Unadjusted credits:		
Operating reserves:		
Equipment replacement fund		50,130.00
Total liabilities		33,154,566.48
Corporate surplus:		
Profit and loss—deficit		52,903.66
Total after deducting deficit		33,101,662.82

Investment in Road and Equipment.

The recorded investment in road and equipment of the Arkansas was $29,794,810.61, as follows:

Property acquired in the reorganization of the St. Louis		$21,736,349.63
Capital stock issued to stockholders of the Arkansas & Southern Railway Company		70,000.00
Construction and equipment of branches		4,305,000.00
Little Rock branch	$1,198,600	
Shreveport branch	1,739,400	
Malden branch	1,368,000	
Additions and betterments		3,278,535.97
Discount on first mortgage certificates sold		55,605.99
Interest on equipment trust obligations		348,319.02
		29,794,810.61

The details of the items above are as follows:

Property acquired in the reorganization of the St. Louis:		
Securities issued to purchasing committee:		
Capital stock	$12,500,000	
First mortgage certificates	3,861,000	
Second mortgage certificates	5,577,000	
		21,938,000.00
Excess of liabilities of the St. Louis assumed—over current assets		103,564.28
		22,041,564.28
Cash turned over by purchasing committee (credit)		305,214.65
		21,736,349.63

Capital stock to the total par value of $70,000 was issued by the Arkansas & Southern Railway Company to the incorporators who represented the interests controlling the Arkansas. When the Arkan-

sas and Southern Railway Company was consolidated with the first Arkansas company on August 18, 1887, an equal amount of capital stock of the Arkansas was issued to the holders thereof. There is no record of any actual consideration having been paid for the stock of the Arkansas and Southern Railway Company.

The figure of $4,306,000 represents the par value of the securities issued to C. H. Smith & Company in connection with the construction and equipment of the branches named as follows:

141	Capital stock	$2,203,000
	First mortgage certificates	2,103,000
		4,306,000

Included in the figure of $3,278,535.97 for additions and betterments are expenditures as follows:

Standard gauging and relaying line	$1,887,112.22
Equipment	925,831.83
Miscellaneous additions and betterments	465,591.92
	3,278,535.97

In changing the gauge from narrow to standard and relaying with heavier rail, the entire cost of the work, both labor and material, was charged to this account and only the salvage value of the narrow gauge material released credited.

The items of discount on first mortgage certificates sold and interest on equipment trust obligations are fully discussed under the caption History of Capital Financing.

Original Cost to Date.

The actual cost of each piece of property owned by the Arkansas at date of demise cannot be determined from the records of that company or its predecessors. The records of these companies and of C. H. Smith & Company show cost of original construction and expenditures for equipment, additions and betterments which, in the aggregate, represent the maximum recorded outlay for all the property of the Arkansas used for common-carrier purposes. The following statement is based on these figures and includes all the recorded costs:

Expenditures of the St. Louis and predecessor companies	$6,437,579.60
Expenditures made by the Arkansas	3,278,535.97
Actual expenditures made by C. H. Smith & Company in construction and equipment of branch lines as shown by records of that company	1,585,546.32
	11,301,661.89

Details are not available from which the above figures can be classified by primary accounts or by states.

Comparison of the foregoing figures with the analysis of the investment accounts of the several companies involved will show that recorded discount, commission, and expenses incurred in the disposal of securities have been omitted, as well as other items not related to the acquisition or construction of property.

The figure of $11,301,661.89 is excessive, in that it includes the total cost (both labor and material) of standard gauging the railroad and relaying the 35-pound rail with the 56-pound rail, with the exception of a salvage value credit for the material released. The figure of $1,585,546.32 shown as the cost to C. H. Smith & Company of constructing and equipping the branch lines built by them does not include any figure representing interest during construction.

142 Miscellaneous Physical Property.

In 1887 the Arkansas acquired certain real estate in the city of Little Rock, Ark., for proposed terminal purposes in connection with the construction of the branch line from Altheimer, Ark., to Little Rock, Ark., at a total cost of $27,327.95. The carrier acquired this property in the reorganization.

Investments in Other Companies.

First mortgage bonds of the Paragould & Buffalo Island Railway Company to the amount of $25,000 were acquired by the Arkansas in connection with the sale of second-hand 35-pound steel rails. The carrier acquired these bonds in the reorganization.

Statement of Funded Debt Issued, Retired, and Outstanding up to the Date of Demise, May 31, 1891.

Up to the date of demise of the Arkansas, it had issued first mortgage 6 per cent gold bond certificates under mortgage dated May 4, 1886, due May 1, 1936, to the par value of $7,797,400, all of which were outstanding in the hands of the public at the demise of the company. Of this total $3,861,000 par value was issued to the reorganization committee for the property of the St. Louis; $2,103,000 par value was issued to C. H. Smith & Company for construction of branches; $1,677,794.01 was issued for cash; $100,000 was given to the Mercantile Trust Company as bonus in sale of second mortgage certificates. The discount was $55,605.99.

The Arkansas had issued second mortgage 6 per cent gold bond certificates under mortgage dated May 4, 1886, due May 4, 1936, to the extent of $7,797,400 par value. This was all outstanding in the hands of the public at the date of demise, May 31, 1891. Of this sum $5,577,000 was issued to the reorganization committee for the property of the St. Louis, and $629,259.39 was issued for cash. The discount was $1,591,140.61.

Up to its demise, May 31, 1891, and between July 1, 1886, and August 15, 1888, the Arkansas had issued four series of equipment trust notes, each maturing serially, and with a grand total face value of $2,415,116, of which $348,319.02 was interest included in the face of the notes. In the case of each of these series a part of the issue was charged to the St. Louis & Texas, a property owned by the same group of persons. The total thus charged was $1,034,358. At the date of demise, May 31, 1891, a part of each of these issues had been retired at par for cash, the total amount retired being $648,541.72, leaving outstanding of these notes in the hands of the public $1,766,574.28, which, added to the $15,594,800 of outstanding bonds, made a total outstanding funded indebtedness of $17,361,374.28.

143 *Summary of Funded Debt as of May* 31, 1891.

Issued to		Consideration.
Reorganization committee for property of the St. Louis		$9,438,000.00
C. H. Smith & Company, for construction of branches		2,103,000.00
Cash		2,653,453.40
Equipment		686,038.98
Interest included in face of equipment notes		348,319.02
One-half of equipment notes (including interest) charged to the St. Louis & Texas		1,034,358.00
		16,263,169.40
Given to Mercantile Trust Company as bonus in sale of second mortgage certificates	$100,000.00	
Discount	1,646,746.60	
		1,746,746.60
Grand total		$18,009,916.00

Of this grand total of funded indebtedness, of $18,009,916, the Arkansas had retired for cash $648,541.72, leaving outstanding in the hands of the public $17,361,374.28. The balance sheet of the Arkansas shows unpaid equipment notes totaling $1,766,574.28, of which the reorganization committee paid $1,189,077.09, leaving $577,497.19 outstanding, one-half of which, $288,748.60, was assumed by the carrier, and the remaining one-half by the Southwestern of Texas.

The discount, totaling $1,746,746.60, was charged as follows:

Investment in road and equipment	$55,605.99
Unadjusted debits (general balance sheet)	1,691,140.61
	1,746,746.60

The Texas and St. Louis Railway Company in Missouri and Arkansas.

This company, herein called the St. Louis, was incorporated under the general laws of Missouri and Arkansas on November 29, 1881, as a consolidation of the Texas & St. Louis Railway Company of Arkansas and the Little River Valley and Arkansas Railroad Company, for the primary purpose of acquiring or constructing a narrow gauge railroad from Bird's Point, Mo., to Texarkana, Arkansas-Texas state line. The St. Louis owned and operated a narrow gauge railroad about 429 miles long, extending from Bird's Point, Mo., in a southwesterly direction to the Arkansas-Texas state line at Texarkana, with branches from Lilbourn to New Madrid, Mo., and from McNeil, Ark., to Magnolia, Ark. The St. Louis was closely affiliated with the Texas, both corporations having been under the same control and their properties operated under a joint system.

A receiver of the property was appointed on January 12, 1884, by the United States Circuit Court, under whom the property was operated to May 1, 1886. Foreclosure proceedings were in-
144 stituted on December 16, 1885, and on February 27, 1886, the property was sold to a bondholders' committee, consisting of Wm. Mertens, Geo. Coppell, L. S. Wolff, M. Gernsheim, and J. W. Paramore. The sale was approved by the court on March 2, 1886, and deed was executed on April 29, 1886, conveying the property to the bondholders' committee.

On May 14, 1886, the bondholders' committee conveyed all the property to the Arkansas. The possession of the property was surrendered to that company on May 1, 1886.

Development of Fixed Physical Property.

The owned mileage of the St. Louis was acquired as follows:

Consolidation:		
Line of the Little River Valley and Arkansas Railroad Company from New Madrid, Mo., via Lilbourn, Mo., to Malden, Mo.		27 miles.
By Construction:		
1882—Bird's Point, Mo., to Lilbourn, Mo.	36 miles.	
Malden, Mo., to Clarendon, Ark.	156 miles.	
1883—Clarendon, Ark., to Pine Bluff, Ark.	53 miles.	
1882—Pine Bluff, Ark., to Texarkana, Ark.-Tex.	150 miles.	
McNeil, Ark., to Magnolia, Ark.	7 miles.	
		402 miles.
Total		429 miles.

On April 20, 1881, prior to the incorporation of the St. Louis, a contract was made in the name of the St. Louis with George B. Hibbard of New York to construct and equip the line from Bird's Point, Mo., to the Arkansas-Texas state line at Texarkana, for $10,000 per mile each in capital stock, first mortgage 6 per cent gold bonds and second mortgage income bonds. A supplemental contract dated June 6, 1881, provided that Hibbard would receive an additional $2,500 per mile each in the securities named on account of changes in the original plan of construction, which changes provided for steel rails instead of iron, heavier bridge construction, grade reductions, and the like.

It would appear that Hibbard was acting as agent for a syndicate formed to finance the construction, but that the construction work was actually performed by subcontractors and company forces who were paid from the funds subscribed by the syndicate, and that securities issued under the contract were turned over to the syndicate.

The entire line from Bird's Point, Mo., to the Arkansas-Texas state line at Texarkana was completed and open for operation on August 12, 1883.

145 History of Capital Financing.

Syndicating, banking, and other financial arrangements.—The capital stock and bonds issued by the St. Louis are not recorded in its obtainable books. A cash book records the receipt of $3,928,000, which sum the minutes of October 17, 1882, recite had been paid in by the syndicate organized to finance the construction of the line. $800,000 of this amount had been paid in prior to the incorporation of the St. Louis. The records do not disclose the members of this syndicate, but reference is made to Kuhn, Loeb and Company of New York as financial agents.

Records of the receivership proceedings indicate that the St. Louis issued its securities on the basis of $37,500 per mile as provided for in the contract with George B. Hibbard for 152 miles of railroad as follows:

Capital stock		$5,650,000
First mortgage 6 per cent gold bonds	$5,650,000	
Less amount unissued	120,000	
		5,530,000
Second mortgage income bonds		5,650,000
		16,830,000

Inasmuch as the constructed line was only 402 miles long, it is probable that the 452 miles, against which the securities were issued, included some side tracks as well as the 27 miles acquired from the Little River Valley and Arkansas Railroad Company.

The obtainable records show the disposition of the funds advanced by the syndicate in the construction of the line and in the

liquidation of the liabilities of the Little River Valley and Arkansas Railroad Company. They also show that George B. Hibbard received a salary and the actual construction work was performed by other contractors and company forces. It appears that he was only acting as agent for the syndicate, and that the securities issued were turned over to the syndicate and disposed of by it.

The records also show the following loans or advances:

North American Investment and Promotion Company, Woershoeffer and Company, and J. W. Paramore		$890,000.00
Kuhn, Loeb and Company, trustee	$525,000.00	
Less repayment	500,000.00	
		25,000.00
J. W. Paramore, trustee		193,078.56
W. W. Sherman and A. Wolff, trustees		714,683.60
Total		1,822,762.16

How these amounts were liquidated in the reorganization cannot be determined from obtainable records.

146 Equipment trust notes to the aggregate amount of $152,814 (including interest) were issued in the purchase of equipment, all of which were retired prior to or during receivership.

Short-term notes aggregating $786,026.11 were issued for the following:

Cash	$250,860.54
Renewal of due notes	45,000.00
Other considerations (principally for materials)	490,165.57
Total	786,026.11

All but $83,320.45 were retired prior to or during receivership.

The receiver issued a total of $627,887.89 of receiver's certificates and $54,442.36 of receiver's notes. He retired all of the notes and $16,542.28 of the certificates. The remaining certificates were paid from funds supplied by the purchasing committee.

The best obtainable information indicates that the total capital liability of the St. Louis at the time of reorganization was $17,441,345.61 as follows:

Capital stock		$5,650,000.00
First mortgage bonds	$5,650,000	
Less unissued	120,000	
		5,530,000.00
Second mortgage income bonds		5,650,000.00
Receiver's certificates		611,345.61
Total		17,441,345.61

Capital stock.—It appears from obtainable records that all of the $5,650,000 par value of capital stock was issued to the syndicate in connection with the original construction of the line as hereinabove stated.

Funded debt.—First mortgage 6 per cent gold bonds of a total par value of $5,530,000 were issued under mortgage dated October 1, 1881, maturing September 1, 1911. Obtainable records indicate that all of these bonds were issued to the syndicate in connection with the original construction of the line as hereinbefore stated, and were all outstanding at the date of reorganization.

Second mortgage 6 per cent income bonds of a total par value of $5,650,000 were issued under mortgage dated October 1, 1881, maturing September 1, 1911. Obtainable records indicate that all of these bonds were issued to the syndicate in connection with the construction of the line as hereinbefore stated, and were all outstanding at the date of reorganization.

Equipment trust obligations aggregating $152,814 were issued in connection with the purchase of equipment. All of these obligations were retired prior to the reorganization.

Receivers' certificates.—Receivers' certificates totaling $627,-
887.89 were issued by the receivers for the purpose of pay-
147 ing equipment trust obligations, operating expenses, and re-
constructions. A total of $611,345.61 was outstanding on date of reorganization, which was liquidated from funds deposited by the purchasing committee.

Loans or advances.—Obtainable records show a liability of $1,822,-762.16 at the time of reorganization for loans or advances made by parties hereinbefore listed. How this amount was liquidated in the reorganization cannot be determined from obtainable records.

Short-term notes.—Short-term notes totaling $786,026.11 were issued by the St. Louis. All but $83,320.45 were retired prior to date of reorganization. Obtainable records do not show how the outstanding notes were liquidated in the reorganization.

Aids, Gifts, Grants and Donations.

Obtainable records do not disclose any cash donations to the St. Louis. Donations of lands are discussed in the report on the carrier.

Results of Corporate Operations.

A condensed statement of the income account for the period from September, 1883, to April 30, 1886, follows:

Railway operating revenues	$1,942,187.34
Railway operating expenses	1,757,451.40
Net revenue from railway operations	184,735.94
Nonoperating income	93,191.04
Gross income	277,926.98

Deductions from gross income:

Interest on funded debt	109,678.75
Interest on unfunded debt	2,641.24
Miscellaneous income charges	131,463.50
Total deductions from gross income	243,783.49
Balance to credit of profit and loss	34,143.49

The only interest accrued on the first mortgage bonds was $109,110 accrued during the calendar year 1883. No interest was accrued on the second mortgage income bonds. The interest on equipment trust obligations was included in the face of the notes and charged to investment in road and equipment. Had the proper amount of interest been charged to income account there would have been a large deficit instead of the credit shown above.

Failure to pay the matured interest on the first mortgage bonds brought about the receivership of the property. That the line was narrow gauge possibly had considerable to do with this condition, as the plans of the purchasing committee embodied financial provisions for standard gauging the road.

Profit and loss.—The credit balance shown on the books of the St. Louis is the amount transferred from income account.

148 Investment in Road and Equipment.

The recorded investment in road and equipment of the St. Louis was $6,228,872. This figure includes $231,292.40, stated to have been expended in acquiring bonds of and liquidating liabilities of the Little River Valley and Arkansas Railroad Company. Deducting this amount from the total would leave a figure of $5,997,579.60, which may be stated to be the maximum amount expended in the construction and improvement of the property of the St. Louis. Analysis of the expenditures could not be made, owing to missing vouchers, but the cash books record expenditures which tend to substantiate that figure. Interest on equipment obligations are included in the above figure, but the exact amount thereof cannot be determined.

Obtainable records do not indicate that any interest on bonds applicable to the construction period was charged to this account. There is no record as to when the bonds were issued, which makes it impossible to calculate what such interest would amount to.

Adding to $5,997,579.60 the maximum recorded outlay in the property of the Little River Valley and Arkansas Railroad Company ($440,000), shown in the report on that company, gives a total of $6,437,576.60, which may be considered the maximum recorded outlay in constructing and improving the property owned and used by the St. Louis for common carrier purposes at the date of its demise.

General Balance Sheet Statement.

Assets.

Investments:			
Investment in road and equipment			$6,228,872.00
Current assets:			
Special deposit (U. S. Circuit Court)		$1,000.00	
Bills receivable		275.00	
Traffic and car-service balances receivable		22,365.93	
Net balances receivable from agents and conductors		1,764.31	
Miscellaneous accounts receivable:			
The Texas	$473,908.41		
Miscellaneous	39,183.61		
		513,092.02	
Total			538,497.26
Deferred assets:			
Working fund advances			539.54
Grand total			6,767,908.80

Liabilities.

Capital liabilities:			
Funded debt unmatured		$5,750,762.16	
149 Received certificates		611,345.61	
Total			$6,362,107.77
Current liabilities:			
Bills payable		83,320.45	
Audited accounts and wages payable		285,646.79	
Miscellaneous accounts payable		2,690.30	
Total			371,657.54
Corporate surplus:			
Profit and loss—credit balance			34,143.49
Grand total			6,767,908.80

Texas & St. Louis Railway Company of Arkansas.

This company was incorporated May 21, 1881, under the laws of Arkansas, by parties interested in the Texas and St. Louis Railway Company, a Texas corporation (which at that time owned a narrow gauge railroad extending from Texarkana, Ark.-Tex., to Corsicana, Tex.), for the primary purpose of constructing a narrow gauge railroad from Texarkana to the Arkansas-Missouri state line.

On November 29, 1881, this company was consolidated with the Little River Valley and Arkansas Railroad Company to form the St. Louis.

That this consolidation had been contemplated prior to the incorporation of the Texas and St. Louis Railway Company of Arkansas is evidenced by a construction contract between George B. Hibbard of New York and the consolidated company, dated April 20, 1881. This contract is acknowledged by the consolidated company by a record in its minute book.

With the exception of a cash book and a minute book of the stockholders and directors, no accounting records of value of the Texas and St. Louis Railway Company are obtainable.

Capital stock of a total par value of $4,600,000 was authorized and subscribed for. How much, if any, was issued is not of record. A syndicate, in which the firm of Kuhn, Loeb & Company of New York was prominent, was organized to finance the construction, and had paid in $800,000 up to the date of consolidation. No construction work was done prior to the consolidation, and all transactions relating to this property are discussed in the report on the St. Louis.

150 Little River Valley and Arkansas Railroad Company.

This company, hereinafter called the Little River, was incorporated September 7, 1876, under the general laws of Missouri, for the purpose of acquiring the property, rights and franchises of the New Madrid and West Prairie Road Company, consisting of a right-of-way, wagon road bed, and appurtenances, extending from New Madrid, Mo., to Malden, Mo., a distance of about 27 miles, together with 70,040 acres of swamp timber lands in New Madrid County, Mo.

With the exception of a minute book and miscellaneous memoranda now in the possession of the carrier, no books or other records of value are obtainable.

According to the minute book referred to above, the Little River issued $197,000 par value of capital stock, of which $160,000 was given for the property of the New Madrid and West Prairie Road Company. The consideration received for the remainder is not of record.

A narrow gauge railroad was constructed between New Madrid and Malden (about 27 miles) on the right-of-way acquired, which was opened for operation in February, 1878. First mortgage 10

per cent bonds of a total par value of $186,000 were issued in connection with the construction and equipment of the line. On May 13, 1881, J. W. Paramore, who was president of the Texas and St. Louis Railway Company, (which at that time owned a narrow gauge railroad from Texarkana, Ark.-Tex., to Corsicana, Tex., about 203 miles) became president of the Little River. This was the first step toward the formation of a narrow gauge railroad system to extend from Bird's Point, Mo., on the Mississippi River, via Texarkana to various points in Texas. In connection with other companies the original scheme contemplated a through narrow gauge line from Toledo, Ohio, to the city of Mexico.

The minute book of the Little River records on July 18, 1881, the sale of all of its lands (except that necessary for railroad purposes) to J. S. Marmaduke, trustee, the surrender by him of the outstanding $186,000 of first mortgage bonds for cancellation and assumption of a debt of $243,000 to J. W. Paramore, trustee, said to have been advanced by him to take up these bonds and coupons and to pay the floating debt of the Little River. Just whom Marmaduke represented in the acquisition of some 70,000 acres of land cannot be determined, but the ownership of the land passed from the Little River. On November 29, 1881, the Little River was consolidated with the Texas & St. Louis Railway Company of Arkansas to form the St. Louis.

The outlay in the acquisition and construction of the property of the Little River cannot be determined, but it could not have exceeded $440,000 as follows:

Par value of capital stock issued	$197,000
Indebtedness to J. W. Paramore	243,000
Total	440,000

This amount is in excess of the actual cost in that the property of the New Madrid and West Prairie Road Company, acquired for $160,000 par value of the Little River capital stock, included the 70,040 acres of land as well as the right-of-way and graded road bed, and also because the item of $243,000 included interest on bonds and possibly operating deficits.

151 The New Madrid and West Prairie Road Company.

This company, hereinafter called the West Prairie, was incorporated under a special act of Missouri approved February 22, 1855, for the purpose of constructing a tool wagon road from New Madrid, Mo., to Malden, Mo., a distance of about 27 miles. The act gave the West Prairie the same rights, privileges, and restrictions as were previously granted to the New Madrid Plank Road Company under act of February 28, 1851, except as to location. No accounting records of value are obtainable. The following statements are taken from various old records and memoranda now in the possession of the carrier. An amendment to the act of February 22,

1855, dated November 5, 1857, required the county court of New Madrid County, "to appropriate every alternate section of swamp land lying and being within one mile on each side of the line dividing townships 22 and 23, north of range 10, 11, 12 and 13 east, in New Madrid County, and not otherwise appropriated to the New Madrid and West Prairie Road Company, for the purpose of aiding said road company in completing said road." This act authorized the West Prairie to sell and dispose of the land so granted.

Apparently the road remained uncompleted for about twenty years, as on October 11, 1875, the county court of New Madrid County, Mo., in an order reciting that certain stockholders of the West Prairie had conveyed their stock to George B. Clark and Oscar Kochtitzky, ordered that the stock held by the county be also conveyed to them in order to secure the completion of the road and consequent valuable drainage of lands, and appointed James H. Howard, presiding justice, as commissioner for the county to make a contract turning over the stock and executing the grants of land provided for in the amendment to the articles of incorporation.

On October 12, 1875, the court approved the execution of a contract providing for the construction of the road by the West Prairie and the conveyance of the lands without cost to the company. This contract provided that the proceeds of lands disposed of prior to the completion of the road were to be placed in the hands of a trustee and used to pay the cost of construction and draining the land, and no lands were to be sold for any other purpose. James H. Howard, the presiding justice and commissioner for the county, was also treasurer of the West Prairie, and was appointed trustee of the land.

On October 12, 1875, the county of New Madrid deeded to the West Prairie 75,620 acres of land. Upon completion of the road, and payment of $10,000 to the estate of Luke Byrne and other parties for expenditures, the county was to convey to the West Prairie certain other lands. On May 3, 1876, the county of New Madrid conveyed by deed to the West Prairie 25,400 acres of land, and on September 8, 1876, an additional 7,040 acres were deeded to the West Prairie, making a grand total of 108,060 acres conveyed under the terms of the contract of October 12, 1875, and the articles of incorporation.

The West Prairie apparently disposed of 38,020 acres of land, as on September 7, 1876, the remaining 70,040 acres were deeded, together with all other property, including road bed and right-of-way, to the Little River, which had been incorporated to take over this property.

152 It is not possible to ascertain how much money was expended in the construction of the road.

The authorized capital stock of the West Prairie was $30,000, consisting of 1,200 shares of the par value of $25 each.

The Arkansas & Southern Railway Company.

This company, hereinafter called the Southern, was incorporated February 17, 1887, under the laws of Arkansas, in the interest of the Arkansas.

With the exception of a minute book, covering about half of the year 1887, no accounting records of value are obtainable. The authorized capital stock of the Southern was $910,000, of which $70,000 was subscribed for, principally by S. W. Fordyce and R. C. Kerens, officials of the Arkansas.

The Southern was incorporated solely for the purpose of enabling the Arkansas to acquire the rights and franchises which had been granted other companies in Arkansas and Louisiana. In the execution of this plan the first Arkansas company, as hereinbefore explained, on August 4, 1887, sold that part of its railroad located in Arkansas to the Southern, subject to existing mortgages, for one dollar and other good and valuable considerations. On August 13, 1887, the Southern acquired the rights and franchises of the Shreveport and Arkansas River Railway Company, and on August 15, 1887, also acquired the rights and franchises of the Little Rock and Eastern Railway Company; the consideration in each case being one dollar and other good and valuable considerations. Finally, on August 18, 1887, the Southern consolidated with the first Arkansas company to form the second Arkansas company under the laws of the states of Arkansas and Missouri. Although the two Arkansas companies were legally separate and distinct, the accounts of the first were continued as the accounts of the second, so that from an economic and accounting standpoint they may be regarded as one company.

Records of the Arkansas disclose that $70,000 of its capital stock was exchanged for an equal amount of the capital stock of the Southern.

The proposed construction work of the companies acquired was done by the Arkansas in 1888, as related in the report on that company.

The Little Rock and Eastern Railway Company.

This company, hereinafter called the Little Rock, was incorporated February 17, 1887, under the laws of Arkansas, in the interest of the Southern, for the purpose of constructing a line of road from Altheimer, Ark., to Argenta, Ark., a distance of approximately 41 miles.

With the exception of a minute book for about half of the year 1887, no accounting records of value are obtainable. The
153 authorized capital stock was $650,000, of which $50,000 was subscribed for, principally by S. W. Fordyce and R. C. Kerens, officials of the Arkansas.

On August 15, 1887, before any construction work was done by the Little Rock, its rights and franchises were conveyed to the

Southern "for one dollar and other good and valuable considerations."

The proposed line from Altheimer, Ark., to Argenta, Ark., was constructed in 1888 by the Arkansas (successor to the Southern) as its Little Rock branch.

The Shreveport and Arkansas Railway Company.

This company was incorporated May 18, 1887, under the laws of Louisiana, in the interest of the Southern, for the purpose of constructing a line of road from Shreveport, La., to the Arkansas state line, in the direction of Lewisville, Ark.

No accounting records of this company were found. A copy of the articles of incorporation disclosed an authorized capital stock of $500,000. Just how much, if any, of this stock was subscribed for, can not be ascertained.

On August 13, 1887, before any construction work was done by the Shreveport and Arkansas Railway Company, its rights and franchises were conveyed to the Southern for one dollar and other good and valuable consideration.

The proposed line from Lewisville, Ark., to Shreveport, La., approximately sixty miles, was constructed in 1888 by the Arkansas (successor to the Southern) as its Shreveport branch.

The St. Louis, Arkansas and Texas Terminal Railway Company.

This company was incorporated May 1, 1888, under the laws of Missouri, in the interest of the Arkansas, for the purpose of constructing a line of road from Malden, Mo., in a northerly direction, to a point on the Mississippi River opposite Grand Tower, Ill., a distance of about ninety miles.

With the exception of a minute book covering the brief period of the company's corporate existence, no accounting records are obtainable. The authorized capital stock was $900,000, of which $90,000 was subscribed for, principally by S. W. Fordyce and R. C. Kerens, officials of the Arkansas.

The plans of the promoters involved the construction of a bridge across the Mississippi River at Grand Tower, Ill., and the extension of the line to St. Louis, Mo., through the incorporation of other companies. However, on August 15, 1888, before any actual construction work was performed, the rights and franchises of the St. Louis, Arkansas and Texas Terminal Railway Company were conveyed to the Arkansas "for one dollar and other good and valuable considerations." The Arkansas then constructed a branch from Malden, Mo., to Delta, Mo., about 52 miles long, under the rights so acquired.

154 Stuttgart and Arkansas River Railroad Company.

This company was incorporated November 21, 1881, under the laws of Arkansas, for the purpose of constructing a railroad from a point near Stuttgart, in Arkansas County, Ark., to a point at or near

Arkansas Post, on the Arkansas River. Its line, which extended from Stuttgart to Gillett, Ark., was constructed as follows:

1888—Stuttgart, Ark., to De Witt, Ark., about	22 miles
1892—De Witt, Ark., to Gillett, Ark., about	13 miles
Total, about	35 miles.

S. W. Fordyce was appointed receiver of the property February 27, 1893, and operated the road to May, 1894, when he was discharged. In August, 1895, he was again appointed receiver, and operated the property to January 3, 1901, when it was sold at foreclosure sale to the carrier for $45,050.

No accounting records of the Stuttgart and Arkansas River Railroad Company are obtainable; therefore no facts relative to capitalization or cost of property can be given.

155 EXHIBIT 2 TO PETITION.

67096. Law.

Valuation Reports of the Interstate Commerce Commission.

[Filed Oct. 25, 1922.]

Valuation Docket No. 2.

Texas Midland Railroad.

Submitted December 14, 1917. Decided July 31, 1918.

1. The valuation amendment, section 19*a* of the act to regulate commerce, authorizes the Commission to find a single sum as the value of the common carrier property for purposes under the act to regulate commerce; and the Commission will ultimately make such finding as to the property of each carrier, supplementing tentative valuations already made in which a single sum is not stated by such findings.
2. In the instant case, findings as to underlying facts are made, with leave to the parties to apply to be heard as to what sum based thereon shall be stated as the value of the property held for the purposes of a common carrier; otherwise the Commission will in course state its conclusions and complete the final valuation.
3. Methods employed in ascertaining the several cost values analyzed and stated. Upon the finding of a single sum as value, further appropriate analysis of the methods and reasons for the differences, if any, will be presented.
4. Original cost to date, which generally can not be ascertained from accounting records alone, will be reported as fully as possible from the best available evidence in each particular case. When the original cost of portions of the common-

carrier property, but not of the whole, can be stated, the ascertained facts will be reported; when the cost of no portion of the property can be identified, the carrier's investment account will be shown. Estimates will be resorted to, within comparatively narrow limits, as to minor portions of the property, the cost of which can not be ascertained from records.

5. In requiring a report as to the original cost to date of "each piece of property" owned or used by a carrier, the act can not be narrowly construed. A reasonable construction requires that original cost should be reported in all reasonable detail, and the words refer to various sections of the railroad, rather than the individual ties, rails, and similar elements.
6. Findings of original cost to date will be supplemented in each case by a full statement of the financial history of the carrier which shows the maximum amount of money which was put into the property.
7. The maximum amount which could have been invested by the carrier, its predecessor, or others, ascertained and stated in the instant case as representing the outside limit of original cost of the property of the respondent to date of valuation.

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8. Cost of reproduction new of the common-carrier property ascertained and stated, upon the assumed basis of the nonexistence of the railroad while all other conditions in the same territory were taken as existent on valuation date, that the most practicable and economical construction program is employed, and that to an inventory of items making up the physical property, shall be applied cost prices fairly representative of conditions on valuation date, with the addition of the estimated cost of placing the items in position as of valuation date, and including certain overhead charges.
9. In ascertaining the cost of reproduction new the Commission is not to ignore expenses which would be incurred by reason of the fact that the physical plant, other than land, would have to be built, and is not limited merely to the reporting of an inventory value.
10. The assumption of present conditions of the existing property, rather than of the original construction conditions, is applied in determining questions raised by the protest as to particular accounts in the estimate of cost of reproduction new.
11. Industrial tracks are those which the carrier has not an unrestricted right to use in serving the public, but which it is obligated to use instead, exclusively or preferentially, in serving a particular industry or certain industries. In the cost of reproduction new estimate- are included such portions of industry tracks as the carrier has a right to remove if it should discontinue the service, or as were in fact paid for by the carrier in original construction. Industry tracks constructed

at the expense of the industry and owned by it are not included in the cost of reproduction new.

12. The words in the valuation act "used by said carrier for its purposes as a common carrier" can not be construed as including property not owned by the carrier where the use of it is only incidental and at the request and for the peculiar benefit of the owner.

13. Under the assumption of present conditions, topographical and otherwise, in determining the cost of reproduction new, sums expended by the carrier in the past for assessments for public improvements will not be included unless the improvement for which the assessment was made is located on the right of way or so closely connected therewith that it would be wiped out if the railroad were removed. Sums actually expended for such improvements are reported in original cost to date when such a figure can be ascertained.

14. The rule stated as to the inventorying of property used by a carrier for common-carrier purposes, but which is owned (1) by other common carriers, or (2) by parties other than a common carrier; and of property which is used jointly with other carriers for common-carrier purposes.

15. No allowance made in the estimate of cost of reproduction new for contingencies as such; but the quantities and prices employed reflect various construction contingencies and fairly represent the amount of money necessary to reproduce the identical property.

16. The percentage plan of stating engineering in the cost of reproduction new is adopted. In stating the cost of reproduction new by the percentage method engineering should be computed on the amount of the investment in the road accounts, exclusive of engineering and land.

17. The percentage method of estimating general expenditures, other than interest during construction, is adopted in determining the cost of reproduction new, and the percentage adopted in the present case is applied to the road accounts, exclusive of land.

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18. In estimating interest during construction, for the purpose of stating the cost of reproduction new, it has been assumed that the credit available is good and uniformly the same and that money is obtainable at the same rate of interest and supplies can be purchased at equally advantageous prices; 6 per cent per annum is assumed as the interest rate and is taken as covering the cost of obtaining money.

19. The period used in determining interest during construction in estimating the cost of reproduction new is taken at one-half of the estimated construction period required for reproduction, plus three months, as to road and general expenditures; and at three months for equipment.

20. Materials and supplies and cash on hand are not included in the estimate of cost of reproduction new; but the amounts on hand, as shown by the carrier's inventory and its general balance sheet, are stated in the tentative and final valuation.
21. In estimating cost of reproduction new, the property to be reproduced is taken as the existing property as it was when put into its present service; and if secondhand materials were used, the cost of reproduction new is estimated for the same kind of materials in the same condition as when installed.
22. The protest of the carrier with respect to the unit prices employed in the estimate of cost of reproduction considered, and various modifications made as to the prices applied to particular classes of material and labor.
23. In estimating the cost of reproduction less depreciation, depreciation has been treated as covering the lessening in the number of units of capacity for service as compared with those existing in the same elements when installed; and upon ascertaining what part of the remaining capacity for service remains, the depreciation which has already accrued is subtracted from the cost of reproduction new and the remainder is given as the cost of reproduction less depreciation. Due consideration is given to existing salvage or scrap value. Depreciation is not taken merely as the equivalent of deferred maintenance or loss of service efficiency. The tentative report herein is corrected as to the service life of certain species of properties.
24. In estimating the cost of reproduction new, as a telegraph line is necessary in the conduct of the business of a carrier, it is assumed that the carrier would equip itself with such facility in the same manner that it did originally, and would be obliged to perform the same amount of work in the theoretical reproduction of the property as it did in the original construction, although a portion of the line was, by agreement, put in the exclusive use of a telegraph company, and the title to the line is in the telegraph company.
25. The present value of the lands owned or used for common-carrier purposes is stated by ascertaining the number of acres and multiplying this acreage by a market value determined from the present fair average market value of similar adjacent and adjoining lands, due allowance being made for any special value which may attach by reason of the peculiar adaptability of the land to railroad use; but nothing additional is added for the expense of acquisition, for severance damages, for engineering, and for interest during construction. For reasons stated, the reproduction cost of carrier lands, and the present cost of condemnation and damages, or of purchase, of a carrier's lands, are not estimated.

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26. When a street or alley in a municipality has been vacated and the carrier uses the land exclusively for common-carrier pur-

poses, the original cost of the land to the carrier, if ascertainable, and its present value, will be included in the inventory as land owned by the carrier, unless it affirmatively appears the carrier does not own it.

27. Where a street or alley in a municipality is used as such by the public, and is also used by the carrier for its common-carrier purposes, along or across the same, no part thereof will be inventoried as land owned by the carrier unless it affirmatively appears that the carrier owns it.

28. Where a highway outside of a municipality is used as such by the public, and is also used by the carrier for its common-carrier purposes, along or across the same, the land jointly used, together with its original cost, if ascertainable, and its present value will be inventoried as land owned by the carrier unless it affirmatively appears that the carrier does not own it.

29. While the valuation act evidently intends to require a statement of all the cost values, and other circumstances which might bear upon the value of the property, at least for rate-making purposes, and appreciation is a fact which may affect the final value of the property, the record herein does not warrant any definite finding either as to the cost or value of such appreciation as has resulted from maintenance, operation, and the effects of time upon the roadbed.

30. The finding in the tentative valuation that "no other values or elements of value were found to exist" is approved upon the record in the instant case, in the light of the fact that in the cost of reproduction new and the cost of reproduction less depreciation figures requisite consideration was given to the fact that the property constitutes a railroad and was doing business, and is not merely an aggregate of materials.

31. Findings and order made as to basic facts in the final valuation of the carrier, to be supplemented by further appropriate finding and order with respect to the value of the property used for common-carrier purposes.

Pierce Butler and *Leslie Craven* for Texas Midland Railroad.

Charles E. Elmquist for Valuation Committee, National Association of Railway and Utilities Commissioners; *Henry C. Flannery* for Minnesota Railroad & Warehouse Commission; *A. E. Helm* for Public Utilities Commission of Kansas; and *Luther Nickels* for Railroad Commission of Texas.

Glenn E. Plumb for Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen.

Rush Taggart for Western Union Telegraph Company.

Charles A. Prouty, Director, *P. J. Farrell*, Solicitor, and *C. F. Newman*, Valuation Attorney, for Bureau of Valuation.

Report of the Commission.

By the COMMISSION:

The tentative valuation of the Texas Midland Railroad, hereinafter referred to as the carrier, was the first which was served under the amendment of March 1, 1913, to the act to regulate com-
159 merce, "providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities," hereinafter referred to as the act. In accordance with the provisions of the act, a copy of the tentative valuation of the property of the carrier was served on October 21, 1916, upon the Attorney General of the United States, the governor of Texas, the Texas Midland Railroad, and the Railroad Commission of Texas. These parties, under the provisions of the act, were allowed 30 days within which to file protests against the tentative valuation. The governor of Texas and the Railroad Commission of Texas jointly protested in 2 particulars, and the carrier in 27 particulars.

Together with its protest the carrier submitted a motion praying that all further proceedings be stayed and postponed until the tentative valuation required by law shall have been made and reported, it being contended that the tentative valuation theretofore served was insufficient. However, we proceeded with a hearing upon the merits of the protests which had been filed, and the motion is overruled.

Hearings were held before our examiners, and to some extent before us, which consumed 51 days, and accumulated a record of 8,224 pages. Ten briefs were filed on behalf of the carrier, the valuation committee of the National Association of Railway and Utilities Commissioners, the brotherhoods of railroad employees, the Western Union Telegraph Company, and the bureau of valuation of the Commission, respectively, which aggregated 2,419 pages. Other briefs dealing with the methods to be pursued in valuation work have been filed. In addition to these hearings, questions relating to the application of general principles underlying valuation work were orally argued before us for four days, and questions as to specific facts concerning the value of lands owned or used by the carrier were, by mutual agreement of the parties, argued before the solicitor of the bureau of valuation and a member of the advisory board.

From this statement of the course of this proceeding it is obvious that every opportunity has been afforded interested parties to bring to our attention facts and views pertaining to the valuation of the property of this carrier. We will now consider the protests.

Shall a Single Sum Be Found as the Value of the Property?

Does the act require or authorize the Commission to find and report a single sum as the value of the property owned or used for common-carrier purposes? The carriers insist that it does so

require and that a tentative valuation which does not include
160 a finding of a single sum as the value of such property is not lawful. Other parties to the proceedings are equally insistent that the act does not permit finding a single sum as the value of the common-carrier property. The act clearly distinguishes such property from that held for purposes other than those of a common carrier; and the requirement that as to the latter class of property the original cost and present value shall be stated is met in the tentative valuation.

The act does not specify any purpose for which a value is to be found or to which the valuation is to be put, except as it provides that all valuations by the Commission shall be prima facie evidence of the value of the porperty in all proceedings under the act to regulate commerce, in all judicial proceedings for the enforcement of that act, and in judicial proceedings brought to enjoin, set aside, annul or suspend, in whole or in part, any order of the Commission. While it may be questioned whether or not the act requires the finding of a single sum as the value of the property, we are of the opinion that it authorizes the finding of such value for purposes under the act to regulate commerce, and it is our purpose ultimately to make such finding as to each property. Tentative valuations in which a single sum as the value of the property is not stated will in due course be supplemented by such finding and a final valuation, including a single sum as the value of the property, will be duly issued.

Although we have determined that eventually a final value will be fixed herein, it does not follow that in this case the proceedings had under the tentative valuation served will go for naught or need be repeated, merely because the tentative valuation served at the outset stated no single sum as the value of the property. We have an administrative function, partly judicial in character, and the essential thing is that all concerned shall be apprised of the nature of the proceeding and shall be fully heard as to their claims. In this case the carrier has protested the failure to state a single sum as value, but neither the Attorney General of the United States, the state authoritis of the state of Texas, or any other appearing party, has questioned what has been done in that regard. All of the basic facts upon which a judgment is to be formed as to the sum to be found as value for the purposes of the act to regulate commerce are before us, and the issues as to them are wholly independent of what shall be deduced from them. The carrier has been heard fully upon these basic facts, and has, by its active participation, assisted materially in developing a record such as to enable us to make full findings. The record herein is extremely voluminous, and has required the expenditure of great sums by the Government, the carrier, and the other appearing parties. Everyone has been heard fully, in fact, exhaustively. There remains for us but the one step of
161 deducing from the facts stated the sum we are to find for such purposes. The carrier has stated its views upon this question in oral argument and has fortified its oral argument by written briefs, in which it has fully set forth its claim, that in the instant

case reproduction cost new is the sum which is to be stated as value, both for the purposes of the act to regulate commerce and for all other purposes. The other parties appearing have been heard upon the same general question, and have each stated their theories as to how the value for rate purposes is to be deduced from the basic facts.

Under the circumstances of the instant case full justice will be done if the findings made as to underlying facts stand, with leave to the carrier and other parties to apply to be heard upon the undetermined question as to what sum shall be stated. Otherwise we shall state our conclusion in due course and complete the final valuation of the carrier.

Analysis of Methods.

The carrier protests that the tentative valuation does not contain an analysis of the methods by which the (1) cost of reproduction new, cost of reproduction less depreciation, (2) original cost and present value of property held for purposes other than those of a common carrier, and (3) absence of "other values and elements of value" were obtained, and the reason for the differences in each case. It contends that the analysis of methods, and statement of the reasons for differences mentioned in the latter portion of the paragraph entitled "First" and in the paragraph entitled "Third," should accompany and be made a part of the tentative valuation.

An analysis of the methods employed in ascertaining the several cost values is presented in Appendix 3 to this report, which, by reference, may be made a part of subsequent tentative valuations. When a finding as to a single sum value of the property is announced, such analysis of the methods by which it is arrived at and the reasons for the differences, if any, as is appropriate, will be presented.

Original Cost to Date.

In the tentative valuation it was stated that the "original cost of road could not be found." Figures purporting to show original cost of equipment and land were, however, reported. The corporate and financial history of the carrier, together with a statement of its gross and net earnings from the time it began operations to valuation date, has also been incorporated. From the tentative valuation it is possible to ascertain the amount of money which has been expended in the property as accurately as the records of the
162 carrier permit. Since the service of the tentative valuation certain other sources of information have been made available to us and made of record, which now permit a statement to be made of at least the maximum original cost.

The carrier in its protest states that the tentative valuation "does not disclose, nor can there be determined therefrom, the true original cost to date of all porperty owned or used by the carrier for its purposes as a common carrier." No evidence, however, was submitted by the carrier upon this point. The governor and Railroad Com-

mission of Texas protested the omission to find original cost to date and introduced evidence as to certain costs.

The act requires us to ascertain original cost to date. This is a fact of prime importance. Every effort is being made to secure this information. The experience of the bureau indicates that in most cases it will be impossible to report original cost to date from accounting records alone.

Original cost to date will be reported as fully as it can be ascertained from the best evidence which is practically available in each particular case, and which seems to us to carry weight as establishing the fact called for by Congress. If it is not possible to show original cost to date for all of the carrier property, but it can be ascertained for a portion of the property, that fact will be reported. In the event that it is impossible to identify the cost of any portion of the property, the total amount on the books of the carrier properly assigned to the road and equipment account will be shown, with an explanation that the authenticity of the amount can not be verified. Whenever the original cost of the greater portion of the property can be ascertained, and as to minor parts can not be ascertained from records, we shall within comparatively narrow limits estimate the original cost of such minor portions so as to show original cost of the whole property as closely as may be, and the maximum limit, stating fully the method pursued.

The act requires us to ascertain and report the original cost to date "in detail as to each piece of property owned or used" by a common carrier, but does not define "each piece of property." If this requirement is narrowly construed, it means that we are obliged to ascertain and report the original cost of every tie, rail, etc., which would be impossible because the identity of ties, rails, and similar objects can not be determined. Clearly, this language is not to be literally and strictly applied. It is to be given a reasonable and sensible construction. What Congress apparently meant by "each piece of property" was that original cost in all reasonable detail should be reported. As a practical matter the words may be taken as referring to various sections of the railroad, made up of
163 many species of physical articles. So far as identification is possible an effort has been made to ascertain the original cost of railroad property by sections, divisions, or other portions.

Our findings as to original cost will be supplemented by a full statement of the financial history of the road, including the issuance of securities. These facts, it is believed, will show the maximum amount of money which could have been put into the property, and there will thus be a reasonable and substantial compliance with the act.

In the instant case we are able to give a figure which clearly represents, within reasonably close limits of accuracy, the maximum amount of money which this carrier, its predecessor, or any other person or persons, invested in the property, as representing the maximum original cost to date thereof. In Exhibit A to Appendix 2 this sum, $2,892,360.94, is classified by the primary accounts carried

in our system of accounts for investment in road and equipment of steam roads.

Railroads now generally represent the results of the merger and consolidation of separate organizations. In many instances of purchase the records and account books of the original companies were withheld in the transfer of the property and now can not be located; in other instances the records have been destroyed. So as to a majority of the older railroads now a part of present organizations no books of account relating to original construction can be found.

This Commission was created in 1887. Some railroads had then been in existence for about 50 years. While the Commission had considered uniform methods of railroad accounting before 1897, it was not until that year that any official announcement was made regarding the subject. On August 23, 1897, the Commission issued a bulletin entitled "Classification of Construction Expenses." This bulletin contained what the Commission considered proper items to be charged as construction expenses, and recommended that the methods therein set forth be followed by all of the steam roads in the United States. The bulletin was merely suggestive in character, for at that time the Commission had no power to enforce its observance.

By the amendment to the act to regulate commerce of June 29, 1906, we were given power to prescribe and enforce a uniform system of accounts. On July 1, 1907, a bulletin entitled "Classification of Expenditures for Road and Equipment" for steam carriers was issued. There was no legal requirement for uniformity in railroad accounting prior to July 1, 1907. The administrative suggestions made in the 1897 bulletin were not generally complied with,
164 and prior to July 1, 1907, the books of carriers were kept in the manner most convenient to themselves. The method of treatment of construction expenses, as now embraced in the road and equipment accounts, was different with different companies, so that, generally, the results shown in the road and equipment accounts to-day do not set forth correctly or adequately the cost of construction of the different parts of the railroad.

This condition was found by our accounting force on the Texas Midland Railroad. When the bureau realized that it was impossible to obtain accurate information from the books of the company concerning original cost to date, it reconstructed the accounts upon what it believed to be a proper basis. To accomplish this it was necessary to examine every voucher which had been issued by the carrier for the payment of money since 1893, the date when its operations began.

The nucleus of the Texas Midland was a portion of the Texas Central Railway, 52 miles long, known as the Northeastern branch. This began operations in 1882; and, while the books of account concerning it were located later, and the substance of them has been made of record herein, it has been impossible to find the vouchers for the payment of the money during the actual construction of that piece of road. Difficulties arose in the examination of subsequent vouchers of the Texas Midland Railroad. For instance, on vouchers

which had been indorsed "construction" the word "construction" had been crossed out and the words "operating expenses" substituted, and the amount charged to operating expenses. Other vouchers marked "construction" were charged directly to operating expenses. In still other instances apparent property costs were charged into the reserve account. Vouchers for materials entering into bridges were found, but nothing to indicate the bridge into which the material was placed. With reference to road and equipment account an amount aggregating $185,000 was found in operating expenses; an amount aggregating $150,000 in income account; an amount aggregating $27,000 in suspense account; an amount of approximately $500 in miscellaneous income account; and a credit of approximately $100 in miscellaneous revenues account. Instances of this character could be multiplied, but the above sufficiently show why it is impossible to determine precisely the amount of money which has been spent in the production of the carrier's property, and which is a proper charge to road and equipment. The work of reconstructing the accounts from the vouchers was done with as much accuracy as possible.

Although it is known that a small portion of the Northeastern branch, 1.93 miles, has been discontinued, no credit has been
165 entered in the road and equipment account of the Texas Midland because of this abandonment. The accounting rules of the Commission require that in case the value of any item of property retired is not shown separately in the ledger, the ledger value of that item which should be credited to the road and equipment account shall be its proportionate share of the value of the entire group in which the particular property is located. Upon a mileage prorate of the total cost of the Northeastern branch as shown by the books of account of the Texas Central the proportionate share to be credited to the road and equipment account because of the abandonment of the 1.93 miles would be $20,126.52. The abandonment occurred in 1896. In 1894, the Railroad Commission of Texas, pursuant to the requirements of the state statute, made an estimate of the cost of the Northeastern branch, which was served upon the Texas Central by the Texas commission and to which no exception was taken. From the detail sheets of this estimate, made of record herein, it appears that the estimated cost of the 1.93 miles was $19,277.54. The latter estimate probably more nearly represents the proportionate share of the abandoned line, and may fairly be taken as an offset to the maximum original cost figure shown, $2,911,638.48, so that the remainder, $2,892,360.94, can be reasonably stated as the maximum of original cost for the present road and equipment, lands included.

Cost of Reproduction New.

In complying with the requirement of the act that "the Commission shall ascertain and report in detail * * * the cost of reproduction new" of each piece of property owned or used by a common carrier for common-carrier purposes, we have proceeded upon the

theory that the property under valuation is nonexistent. In the tentative valuation in this case we find that the cost of reproduction new of road and equipment, exclusive of lands, is $3,382,004, arrived at in the following manner: The engineer making the estimate assumed that the road was not in existence. All other conditions in the territory through which the road runs were taken as they existed on valuation date. The engineer then prepared what he conceived to be the most practicable and economical program for the construction of the road. The items which make up the physical property were then inventoried and cost prices fairly representative of conditions on valuation date were applied. To the figures thus obtained was added the estimated cost of placing the items in position as of valuation date, including certain overhead charges. The result thus arrived at is the cost of reproduction new.

This method of estimating cost of reproduction new is attacked by the Minnesota Railroad & Warehouse Commission as being
163 within the prohibition announced by the Supreme Court of the United States in the *Minnesota Rate Cases*, 230 U. S., 352. It is contended that this decision condemned any cost of reproduction new ascertained by an assumption of the nonexistence of the railroad under valuation while at the same time assuming the existence of cities, industries, and other developments alongside the railroad. The following quotation from the decision of the Supreme Court above cited, at page 452, is referred to as supporting this contention:

> Moreover, it is manifest that an attempt to estimate what would be the actual cost of acquiring the right-of-way, if the railroad were not there, is to indulge in mere speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry and trade. Communities have long been dependent upon its service, and their growth and development have been conditioned upon the facilities it has provided. The uses of property in the communities which it serves are to a large degree determined by it. The values of property along its line largely depend upon its existence. It is an integral part of the communal life. The assumption of its nonexistence, and at the same time that the values that rest upon it remain unchanged, is impossible and can not be entertained. The conditions of ownership of the property and the amounts which would have to be paid in acquiring the right-of-way, supposing the railroad to be removed, are wholly beyond reach of any process of rational determination. The cost-of-reproduction method is of service in ascertaining the present value of the plant, when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon mere conjecture. * * *

Especial attention is directed by the Minnesota commission to the second last sentence of the above quotation, it being asserted that while the court was considering particularly the method used in ascertaining the reproduction cost of land, the words "the plant"

were used advisedly for the purpose of condemning that particular method of securing cost of reproduction new, not only so far as land was concerned, but also with respect to all the other property of a railroad.

The Minnesota commission further contends that we have construed the words "cost of reproduction new" too literally; that "cost of reproduction new" is in reality a misnomer, and that what should be reported is inventory value at valuation date. In other words, we should ascertain the cost of the railroad property as it stands on valuation date without taking into consideration any expense which would be incurred by reason of the fact that it would have to be built. By applying this method to the instant case, it is asserted that the figure reported by us is too high by at least $630,151, or approximately 23 per cent. This alleged excess is made up of what are said to be improper charges to engineering, grading, bridges, tres-
167 tles and culverts, ties, rails, other track materials, ballast, tracklaying and surfacing, buildings, signals and interlockers, other road expenditures, steam locomotives, and general expenditures. It is further claimed that this amount does not cover all excessive allowances, but that a complete analysis of the tentative estimate would raise this to at least 33 per cent of the correct present cost of reproduction. In the event that we can not accept the theory as outlined above, the Minnesota commission requests that in the valuation which is finally reported these alleged excessive allowances be set out separately so that a correct amount representing cost of reproduction new can be stated when the courts have laid down the proper principles to apply.

We can not accept the view of the Minnesota commission that the decision of the Supreme Court in the *Minnesota Rate Cases, supra*, condemned the method employed by us in securing cost of reproduction new. In our view the language of the court relied on in this respect relates to railway rights of way, yards, and terminals, and not to railroad property other than land. At page 453 the court said:

* * * The estimates before us, as approved by the master, with his increase of 25 per cent in the case of the Duluth property, must be taken to be estimates of the "railway value" of the land; and whether or not this is conceived of as paid to other owners upon a hypothetical reacquisition of the property is not controlling when we come to the substantial question to be decided.

That question is whether, in determining the fair present value of the property of the railroad company as a basis of its charges to the public, it is entitled to a valuation of its right-of-way not only in excess of the amount invested in it, but also in excess of the market value of contiguous and similarly situated property. * * *

and on page 455:

Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so al-

lowed, apart from any improvements it may make, can not properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right-of-way, yards and terminals upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of "engineering, superintendence, legal expenses," "contingencies" and "interest during construction."

168 On page 456 the court further said:

The property other than land, as the detailed statement shows, embraced all items of construction, including roadbed, bridges, tunnels, etc., structures of every sort, and all appliances and equipment. The cost of reproduction new was ascertained by reference to the prices for such work and property. In view of the range of the questions we have been called upon to consider, we shall not extend this opinion for the purpose of reviewing this estimate, or of passing upon exceptions to various items in it, as their disposition would not affect the result.

Furthermore, it should be stated that in the decisions in *Cedar Rapids Gas Co.* v. *Cedar Rapids,* 223 U. S., 655, *Des Moines Gas Co.* v. *Des Moines,* 238 U. S., 153, and other cases, the method pursued by us in securing cost of reproduction new was before the Supreme Court, and in no instance is there an intimation that the method pursued was unlawful. We do not think, therefore, that the *Minnesota Rate Cases, supra,* can be construed as condemning the Commission's theory in securing cost of reproduction new. Furthermore, so far as we know, this basis for reporting cost of reproduction new has been universally used ever since the valuation of public utilities has been attempted. Cost of reproduction new, as applied to the items embraced in the engineering report, must be assumed to mean exactly what the words themselves imply, namely, that a railroad actually being operated is conceived of as nonexistent and then theoretically brought into existence by a succession of steps well known to competent engineers.

Topographical Conditions.

It can be readily seen that in reproducing a railroad to-day the topography of the surrounding country may be and probably is different from what it was when the railroad was originally constructed. The difference in conditions is probably greater in the case of an old

railroad than in the case of one recently built. Cultivated lands through which the railroad runs to-day may have been part of a forest at the time of original construction. Necessarily, therefore, the amount of clearing and grubbing which would be performed to-day in a theoretical reproduction of a railroad under valuation would be considerably less than that which was done in connection with original construction. The determination of the question whether original or present conditions shall govern in ascertaining the estimates to be made in cost of reproduction new is therefore important.

Under "grading," which is account No. 3, in cost of reproduction new, we have estimated $10,550 for clearing and grubbing, made up of 353.63 acres of clearing at $25 per acre and 41.72 acres of grubbing at $40 per acre. The quantities employed were esti-
169 mated according to the extent of timber contiguous to the right of way of the carrier on valuation date. The unit prices reflect representative contract prices for similar work in the vicinity. The carrier insists that the estimate of the cost of reproduction new must include the full amount of clearing and grubbing which was done at the time the road was built. It was agreed between the carrier and the bureau that the amount of work originally done was 566 acres of clearing and 133 acres of grubbing, and that, if we should decide that original conditions should govern, these figures would be substituted for those now contained in the tentative valuation.

The bureau, in its estmiates of reproduction cost, has in this respect disregarded conditions existing at the time of construction and has considered the right of way of the carrier in connection with the land which adjoins it on valuation date. For example, if tillage land is on either side of the right of way, the right of way is treated as similarly devoid of trees and brush; if a forest adjoins the right of way it is assumed that the right of way is a part of the forest with a corresponding growth thereon. We approve this method as involving the minimum of conjecture.

The carrier asserts that in determining cost of reproduction new, conditions with respect to population, business capacity, productiveness, and property values in the territory served by the railroad shall be taken as they exist on valuation date, but that the historical construction of the property must be taken into consideration whenever a rational engineering program for reproduction would so warrant or require. In the case of clearing and grubbing an allowance for the work which was done in order to clear the right of way is contended for. The method followed by the bureau and approved by us in this case is asserted to be unjust for the reason that the valuation excludes any allowance for damages to crops, gardens, etc., which would be incurred by the carrier in securing its right of way and terminal lands under present conditions. Furthermore, it is alleged, nothing is included for the cost of removing the buildings which were in fact upon the land when acquired, or which, on the basis of present conditions, would be on the right of way or terminal lands on valuation date. In other words, it is claimed that we are incon-

sistent in ignoring present conditions in the case of damages to crops, for instance, and in considering present conditions in the case of clearing and grubbing.

While the carrier contends that the estimate in this respect is too small, the Minnesota commission is of the opinion that it is too great, and intimates that clearing and grubbing may be made a source of revenue. It points out that a unit cost of approximately $29 per acre is applied for clearing and grubbing, against which there
170 is no offset representing the sale value of the forest products removed. It is claimed "it would be a very lean acre, indeed, that would not yield twice this allowance or at least $58 per acre in merchantable forest products." The record shows that these are lean acres.

As previously stated, we interpret the term "cost of reproduction new" literally, i. e., the cost of reproducing under present conditions the existing property of the carrier without computing depreciation. The amount of clearing and grubbing which was necessary in the original construction is reported in "original cost to date" when it can be obtained. There can be no doubt that the building of the railroad has added to the value of adjoining land. We are required to find the present value of lands in a carrier's right of way; and such present value is measured by the value of adjoining lands. It would therefore be improper to allow for clearing and grubbing originally done in addition to the benefit derived by the carrier from the increase in the value of adjoining lands.

If original conditions were to govern, data concerning the work done many years ago could not be obtained in many instances. Data concerning original conditions could probably be secured in the case of recently constructed railroads. The amount reported in the first case would be the result of speculation while in the latter it would be the statement of a fact.

Cost of reproduction new is at best an estimate, but as now reported by us is derived under the same general rules, and the estimates regarding different properties are comparable in all cases.

It will undoubtedly happen that in a theoretical reproduction of a railroad the right of way at present runs through valuable standing timber. If the assumption that the right of way is covered with the same growth in the same density is correct for the purpose of ascertaining the cost of reproduction of clearing and grubbing, it follows that an estimate should also be made of the amount of salable products which could be derived from such growth and the proceeds thereof at prices prevailing in the locality credited against the estimated cost of clearing and grubbing. No such offset is allowed in this case for the reason that the facts do not warrant it.

Industrial Tracks.

In the course of the development of the transportation systems as they exist in the United States to-day thousands of so-called industrial tracks have been constructed. These tracks connect the main tracks of carriers with particular industries. Over them incoming

freight is delivered by the carrier to the industry, and out-
171 going freight is delivered by the industry to the carrier. Generally industrial tracks are used exclusively by the particular industry for whose benefit they were built, but in some instances industry tracks are also used by others. It is safe to say, however, that a large percentage of the traffic moved over industrial tracks is for the industry or industries located thereon and for whose benefit the tracks were originally constructed.

Industrial tracks have generally been constructed in accordance with contracts between the industry and the carrier, and the considerations of the contracts have varied greatly. In most instances the industry pays a portion of the entire expense of constructing the track, including the cost of the land and materials used.

We have defined an industrial track in Valuation Order No. 12 as a "track which the carrier has not an unrestricted right to use in serving the general public, but which it has obligated itself to use instead exclusively, or preferentially, in serving a particular industry or certain industries." In cost of reproduction new the inventory of the carrier includes such portions of an industry track as it would have a right to remove if it should discontinue the service, except that we always include in the carrier's inventory the estimated cost of reproducing any item of property in the industrial track which was in fact paid for by the carrier in original construction. In determining the portions of the track which the carrier would have a right to remove in case of reproduction if the service were discontinued, we assume that reproduction would take place under a contract identical with that covering original construction. Where the carrier has procured the right of way and constructed the track at its own expense, both are inventoried to it. If the industry constructed the track at its expense and owns it, nothing is allowed to the carrier in cost of reproduction new. Where the carrier and the industry have both contributed, which is the usual case, the carrier is credited with an amount covering the estimated cost of reproducing that which it did produce. If the industry has paid for the items of property making up the track, but has given the carrier the right by contract to remove the track, etc., credit is given to the carrier for the reproduction cost of such property. In the case of land nothing is allowed the carrier if the land is owned by the industry. When, however, the carrier does not own the land, grading and other permanent structures are inventoried as above described. In other words, the carrier is limited to its interest in the industrial track.

In the instant case, however, the carrier contends that any such
172 treatment of industrial tracks is erroneous and in violation of the act. It contends that the act requires us to report the cost of reproduction new of "all the property owned or used," and, in the case of lands, the original cost and present value of "all lands, rights of way, and terminals owned or used." It is asserted that since the carrier unquestionably uses these industrial tracks it is our duty to include them in cost of reproduction new and report the present value of the land contained in the right of way. The

matter of title to the land and tracks, it is claimed, can not be inquired into in view of the wording of the act.

Certainly such a figure would not be accepted by the carrier as an element to be considered in arriving at a value for taxation purposes, since the amount would embrace property which it did not own. The use of such a figure would be equally without justification for purchase purposes, for the reason that a carrier could not convey title to property which it used but did not own. The same objection would apply to the use of the figure for capitalization purposes. While for rate-making purposes it may be proper to consider the value of the property used, a figure reported in the manner contended for might include more property than was being used by the carrier whose rates were being adjusted, for the reason that the carrier might not be operating all of the property which it owned.

That the policy pursued by us regarding industrial tracks is entirely fair to the carrier can not be questioned. The carrier is not only credited with the amount of money which it is estimated would be the cost of reproducing that which it did produce, but in addition thereto is considered the owner of materials going into the tracks, even though such materials were paid for by the industry, when the right of removal on discontinuance of the service can be shown.

Our view that the cost of industrial tracks would not be paid for entirely by the carrier is certainly not inconsistent with the history of the construction of such tracks in the past. This being true the logical assumption, it would seem to us, in estimating cost of reproduction new, is that the industrial tracks would be constructed under the same conditions as now subsisting in the contractual relations between the carrier and the industries served by these tracks. That a carrier should not receive credit in cost of reproduction new for any part of its property which it would not be obliged to pay for is equitable. This doctrine has received approval in *Appleton Waterworks Co.* v. *R. R. Com. of Wis.*, 154 Wis., 121. This case involved an order of the Railroad Commission of Wisconsin, fixing the value of the property of the water company at $255,000, and directing the city of Appleton to pay that amount to the water company as the purchase price of its plant. Among the elements considered by the Wisconsin commission in determining the value of the prop-
173 erty were cost of reproduction new and present physical value, based on cost. As the first figure the commission reported $252,091 and as the latter $242,127. In arriving at cost of reproduction new the commission omitted an allowance for excavating and filling trenches in which to lay 252 service pipes. This omission was alleged as error and the case was appealed to the supreme court of Wisconsin. At the time the plant was taken over by the city of Appleton there were 1,827 service pipes attached to the mains. The water company had dug and refilled at its own expense 1,575 of the trenches containing the service pipes, while the expense with respect to the remaining 252 was borne by the patrons of the company in accordance with a rule of the company in force during the latter years of its existence requiring a prospective consumer to pay for the cost of digging and refilling service-pipe trenches. The court up-

held the railroad commission in excluding the money expended by the patrons in digging and refilling the 252 trenches referred to and said:

Cost of reproduction must mean the cost which will be necessarily incurred by a reasonably prudent and careful man, using ordinarily careful business methods, in reproducing a plant of equal efficiency. Anything which, under such a conduct of the business, would cost nothing to reproduce cannot logically be included.

To hold that a carrier is entitled to the full amount of the value of industrial tracks, when a part of the expense of original construction has, in fact, been borne by the industry, would be manifestly unfair.

Under these circumstances it cannot be that the lawmaking power intended by the words "used by said carrier for its purposes as a common carrier" to include property not owned by the carrier where the use by it is only incidental and at the request and for the peculiar benefit of the owner. The mere movement of a locomotive of the carrier over the track of a private individual for the benefit of that individual at his request is not a use under the act. The industry track is *sui generis* and the act must be interpreted with reference to practical conditions in each case. The method followed as to such tracks in the tentative valuation is approved.

Assessments for Public Improvements.

In account No. 39 of the classification of investment in road and equipment, the carrier is required to report the cost of constructing public improvements, such as grading, sewering, curbing, guttering, paving, sidewalks, etc. This account also includes the cost of improvements when made by the carrier's employees under government requirements. The carrier in this proceeding has
174 expended $9,477.50 for assessments for public improvements as shown by charges to account No. 39, and claims that this amount should be included in cost of reproduction new. The amount expended is reported in original cost to date when such a figure can be ascertained. The principle announced concerning the treatment of "topographical conditions" in cost of reproduction new applies with equal force to this item; and, since the property of the carrier is presumed to be reproduced under present topographical and other present conditions, it will be seen that no assessments for public improvements would be incurred, and this item would therefore be improper. As assessments for public improvements can only be levied in proportion to benefits received by the lands assessed, the present value of lands adjacent, taken as the basis for the ascertainment of the value of railroad lands, reflects the public improvement assessments in question. It should be stated, however, that if a public improvement for which an assessment against a carrier has been made in the past is located on the right of way of the carrier, or so closely connected therewith that it would be wiped out if the railroad were removed, the estimated cost of reproducing it would be in

cluded in the valuation under the heading of cost of reproduction new.

Property Used but not Owned.

In addition to the use of property owned, many common carriers have made arrangements by contracts for the use of property for common-carrier purposes which is owned by others. In instances where property is used individually by a carrier for common-carrier purposes and is owned by some party other than a common carrier the Commission includes the property in detail in the inventory of the using carrier. The inventory also includes a description of the ownership and of the use. Ordinarily where property is used by one carrier for common-carrier purposes and is owned by another carrier, the inventory of the owning carrier shows in detail the three cost values required by the act to be reported. The inventory also shows the terms of the use. The inventory of the carrier using such a piece of property shows the totals for the three cost value, and also sets forth the ownership and terms of the use. It sometimes happens that the details with respect to a property of this kind are reported in the inventory of the using carrier. This is true in instances where the whole property of a common carrier is operated by another common carrier and the records of the property are in the possession of the using carrier. Where private property is partially used by a carrier for common-carrier purposes, but it is impossible or impracticable to segregate such property and
175 place a separate value upon it, we report the rental paid. In an instance of that kind the property itself is not included in any inventory made by us. Where property is owned by a common carrier and is used jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms of the use appear also in the inventory of the using carrier or carriers.

It has been our endeavor to adopt a method with respect to this class of property which will permit of reporting the three cost values for all property used for common-carrier purposes without duplication. When it is borne in mind that many railroads are not operated exclusively by their owners, but that certain portions thereof are used by one or more carriers by virtue of trackage rights, etc., it is apparent that duplication of values for such jointly used property will result unless a proper course of procedure is pursued. The necessity of securing reproduction new and reproduction less depreciation values without duplication is manifest, since these values must necessarily be considered as factors entering into the determination of an ultimate value of railroad property.

In its protest the carrier makes no complaint concerning the property used exclusively by it, but insists that the procedure above outlined is erroneous to the extent that it results in omitting from the

inventory the three cost values of property used but not owned by it and the value of its right to use such property.

As stated above, in instances where private property is used only partially by a carrier for common-carrier purposes the property does not appear in any inventory made by us. Items of this character are, as a rule, insignificant in amount. To attempt to ascertain the cost figures for property of this kind would entail the expenditure of a large amount of time and money entirely out of proportion to the benefits to be derived from the results which would be obtained. For example, in practically every large city in the country carriers have rented offices in public buildings for the sale of tickets, solicitation of traffic, etc. These buildings are owned by private business interests. The space occupied by the carrier devoted to common-carrier purposes is but a small part of the entire building. It can safely be assumed, we believe, that the act never contemplated an appraisal of property which is merely incidental to the common-carrier business. In instances of this kind we report the rental paid. Since under the accounting rules of the Commission the carrier is permitted to deduct rental paid from the revenue derived from operation, this method is as fair to the carrier as to the public. Of course if the amount of the rental paid is more
176 than the value of the use, the public will be injured to the extent of the amount in excess of a fair rental so far as the particular carrier is concerned, while, on the other hand, if the amount of the rental paid is less than the value of the use the public will be benefited to a corresponding extent.

And, further, the adoption of a rule requiring the inclusion in the inventory of every carrier of every piece of property used by it for common-carrier purposes would lead to absurd results. During certain periods of the year a large number of railroads are called upon to move the cars of circus companies. These cars are used by the transporting carrier for common-carrier purposes, but no one can seriously contend that the law contemplates the ascertainment of the cost values for such cars with credit therefor in the inventory of the using carrier. It follows that our practice with respect to partially used privately owned property is reasonable, and the results obtained thereunder are not in conflict with a correct interpretation of the act.

It has also been stated above that where property is owned by a common carrier and is used by it partially with another carrier or carriers for common-carrier purposes, such property is included in detail in the inventory of the owning carrier, and the use is described in that inventory and also in the inventory of the using carrier or carriers. This is a correct statement of the general rule, but the method pursued varies with the circumstances of the particular case.

In the case under consideration the carrier uses jointly with the owner that portion of the St. Louis Southwestern Railway of Texas, commonly known as the Cotton Belt, between Commerce, Tex., and Greenville, Tex., 13.97 miles in length, as a part of its main line. This portion of the Cotton Belt forms the connecting link between

two pieces of track owned exclusively by the Texas Midland. Without it the carrier would be unable to perform through transportation service between points located north and south, respectively, of this particular portion of the Cotton Belt. The 13.97 miles has been considered as a single valuation section. It has been inventoried and priced by itself. Cost of reproduction new and cost of reproduction less depreciation for it will be stated separately. This detailed information will appear in the inventory of the Cotton Belt when completed, with a statement that this section is used by the Texas Midland, together with a description of the terms of the use. In the tentative valuation under consideration it is stated "the tracks of the St. Louis Southwestern Railway Company of Texas between Greenville and Commerce, a distance of 14 miles, are used under a trackage arrangement to unite the two pieces of the Texas Midland * * *," so that if it becomes essential it will be possible at
177 any time to refer to the inventory of the Cotton Belt and ascertain the cost values for that particular piece of property.

The allegation has been made that as a result of this practice the valuation which has been served in this proceeding is incomplete, for the reason that the valuation of the Cotton Belt has not been made public, and therefore the cost values of this 13.97 miles used by the Texas Midland are not included in any records available to the public. If the wishes of the carrier in this regard were to be followed, we would be unable to announce the valuation of any railroad which uses property for common-carrier purposes owned by another carrier or carriers until such time as the valuation of the other carier or carriers is completed. This would seriously embarrass the valuation work and could not result in any benefit to the public. We would not be justified, therefore, in delaying the service of the tentative valuation of a particular carrier until the completion of the valuations of other carriers which would include detailed figures with respect to property used but not owned by that carrier.

There is, however, a considerable amount of jointly used property which will not be separately inventoried and for which detailed figures will not be reported separately. Detailed information of this kind could only be secured after the expenditure of a large amount of time and money, and it is felt that the results obtained would not be commensurate with such expenditures. Certain classes of trackage rights are illustrative. Many instances have been found where a carier secures the right to use the tracks of other carriers for common-carrier purposes for distances ranging from 0.01 of a mile upward. Sometimes the right to use these tracks is only occasional. The restricted right to use these tracks is merely incidental. The tracks over which such inconsequential and incidental rights of use are granted are inventoried as a part of the property of the owner; reference is made in that inventory to the use and also in the inventory of the using carrier or carriers, so that the statute will be literally complied with, because every piece of railroad property which is owned or used for common-carrier purposes will be inventoried.

In addition to its claim that the three cost values of the property used but not owned should be included in its inventory, the carrier asserts that it is our duty to report separately a figure as the value of the right to use. It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public service corporation in serving the public which is to govern in fixing rates. San Diego Land Co. v. National City, 174 U. S., 739. This being true, the value of that property can not be increased or diminished by contracts or other arrangements
178 between the carriers themselves. In the absence of an improper payment as rental the public is not concerned with the acts of carriers between themselves. The law requires the ascertainment of values for property owned or used, but not the value of the use.

The attempt to fix the value of use would be speculative, because of the absence of any sound basis upon which to proceed, and if obtained would result in the inflation of the property values of the carriers upon which the public may be required to pay a fair return. Indeed, such a finding by us would have the effect of inviting the carriers to make arrangements between themselves with the view of increasing the value of their property.

It should be further noted that if the carrier is correct in its claim that the right of joint use may be of more value than the rental paid and that therefore the Commission should appraise this right, and we do not intend to intimate that this can be so, still in such event the carrier should make its claim and introduce its evidence showing the value of the use to the end that an intelligent finding might be had. The mere putting of the property into the inventory would signify nothing and would only result in duplication.

When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public, with the single exception of that insignificant portion which is privately owned and partially used by common carriers. The inventories of the individual carriers will contain the cost values in detail with respect to property owned; the cost values in detail for property exclusively used by them but owned by a non-carrier; total cost values for property exclusively used by them but owned by a common carrier; a description of the terms and use of jointly used property of others with a reference to the report of the owning carrier for details in regard thereto; and a description of the terms and use of jointly used property owned by them with a reference to the reports of the using carrier or carriers for details in regard thereto. All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once. There will be and should be no duplications.

It follows that the method adopted is approved.

Contingencies.

In the estimate of cost of reproduction new we have not allowed any amount under the head of "Contingencies," and this omission is assigned as error by the carrier.

179 When the construction of a railroad is under consideration it is customary for an engineer to estimate the amount of money it will be necessary to expend in building the property. Experience has shown that it is practically impossible, no matter how carefully such an estimate may have been made, to include all the items of expense which will be incurred in the work of construction. Additional expense is caused by omissions and unforeseen difficulties in the work of construction. Necessary materials are sometimes omitted. From soundings a cut may appear to be made up entirely of earth and the estimate for excavating and digging is based upon this expectation. However, when the work is performed it is found that it contains a large boulder which it is necessary to cut through or entirely remove. This unforeseen condition lengthens the time allowed for construction and correspondingly increases the expense. Frequently quicksand is found where solid earth was expected. Numerous other instances of unforeseen difficulties could be cited which occur and which add to the total cost of the work. In order to provide for expenses of this kind the practice of including a certain sum for contingencies in estimates of the prospective cost of construction has been quite generally adopted.

The carrier contends that in a theoretical reproduction of the property these same omissions will be made and unforeseen difficulties will be encountered, and in order to secure a figure fairly representative of reproduction cost an estimate for contingencies as such must be made.

In our view the theoretical reproduction of a railroad, such as is assumed in valuation work, is materially different from the original construction and does not justify an allowance for contingencies as such. In theoretical reproduction the property to be constructed by the engineer is before his eyes. The topography of the country through which the right of way runs can be observed. He knows the natural difficulties which will have to be overcome. If rock is found, his estimate is based upon cutting through or removing that rock. The exact amount of materials above the roadbed is capable of ascertainment, and no addition should be made for materials omitted. However, with respect to certain materials the carrier is not limited to the amount necessary to duplicate what is actually in the property. This is illustrated by the item of spikes. It is recognized that in laying rail a certain percentage above the number of spikes required is purchased to take care of losses and imperfections, and an allowance to cover these possibilities is made. It is recognized, of course, that in compiling the inventory of the roadway there are certain quantities which are hidden and can not be observed.

180 In estimating hidden quantities the representatives of the Commission rely upon the statements of the carriers supplemented by such records as they may possess, tested by the observations of our engineers. These statements and records are accepted unless they appear to be erroneous on their face. Field notes of the Commission containing the estimate of the quantities to be allowed are furnished the carrier if desired, and if objected to the matter is thoroughly investigated. In the application of prices to the items embraced in the inventory, we endeavor to compensate for all expenses which will be met in connection with a particular item. The item of grading furnishes a good illustration. We ascertain the price per cubic yard which is proper to apply for grading, and its determination in this regard is guided by prices paid under contracts for work of this character. However, it is recognized that certain work is performed by the grading contractor which is not included in his contract price, such as erecting temporary bridges, constructing ditches off the right of way, etc. To the price per cubic yard which is obtained in the manner indicated above is added an estimated amount to cover the additional expense. A similar addition is made in other cases when necessary.

The statement that no provision for contingencies has been made by us in this proceeding is therefore incorrect. The figure reported as cost of reproduction new is an estimate of the amount of money necessary to reproduce the identical property under valuation. The inventory is made with great care and the prices applied are arrived at after exhaustive study. Every necessary expense is taken into consideration.

Since reproduction new is at best an estimate, it is apparent that an estimate arrived at upon a basis as outlined above is as liable to be too high as too low and that therefore there is no warrant for the addition of a definite amount to cover contingencies, but that any allowance of that kind which ought to be made should be and is taken care of in connection with particular items of property.

Engineering.

In the tentative valuation under consideration we allowed for engineering approximately 2.15 per cent of the amount shown as cost of reproduction new of the road accounts, exclusive of land and engineering itself. The carrier contends that this amount is not sufficient and that between 4 and 5 per cent should be provided. It has also been contended by certain carriers that it is not correct to allot a gross sum for engineering, but that engineering should be assigned to particular pieces of property. The matter of the
181 sufficiency or insufficiency of the sum included will be dealt with in a subsequent portion of this report in connection with unit prices.

In securing cost of reproduction new an estimate for engineering has always been made. To ascertain the amount two methods have generally been employed, known as the synthetical and the historical.

By the synthetical method an estimate is made of the amount of engineering service which will be required and its cost. A construction program is mapped out; the number of engineers required is determined; their grade and salaries are fixed; the length of their service is stated and in this way the total amount of the expenditure is arrived at. The objection to this method is that no supporting data can be found. Reliance must be placed entirely upon the judgment of the engineer making the estimate and it is impossible to test that judgment by experience as disclosed by the records of the carriers.

The historical method inquires into what the expense for engineering has been in the past and seeks to determine in this manner what the expense would be to-day.

Since the accounting rules of the Commission have been in effect, engineering has stood as account No. 1 in expenditures for road and equipment and it has not been difficult to distinguish the items which should go into this account. The cost of engineering can, therefore, be ascertained with substantial accuracy as to many railroad properties. In estimating the cost of new work it has been customary to add a percentage of the total estimated cost to cover engineering, and in reproduction new the Commission has adopted the percentage method based upon charges to this account in the past.

The investment in road and equipment account is divided into three classes—road, equipment, and general expenditures. Engineering, of course, has no connection with the general expenditure accounts. While in some instances there is some slight engineering cost properly assignable to equipment, the amount is negligible. An expense of this character is incurred when equipment is ordered according to specifications prepared by the carrier. The elimination of equipment and general expenditures accounts in arriving at the amount to be estimated for engineering leaves for consideration the road accounts. It is clear that engineering itself should be excluded and the same is true of land, since there is no engineering cost in connection with this item not reflected and ordinarily included in the enhanced value of contiguous land. See *Minnesota Rate Cases*, *supra*, at page 450. Hence, we conclude that engineering should be computed on the amount estimated for the various road accounts, exclusive of engineering and land, and this basis has been adopted.

182 In order to ascertain the proper percentage to apply the bureau made a study of the accounts of different construction projects. This study embraced 121 projects in different sections of the country ranging from 2½ miles to 900 miles in length. The total number of miles of construction was 9,617, the cost of which was $302,000,000. The amount found charged to engineering varied from 0.837 per cent to 9.732 per cent of the total amount shown as investment in road excluding land. In 6 instances the percentage for engineering exceeded 6 per cent; in 10 instances it was between 5 and 6 per cent; in 4 instances it was below 1 per cent,

and in 16 instances between 1 and 2 per cent. In the balance of instances, 85, it ranged from 2 to 5 per cent. The weighted average showed approximately 3.6 per cent.

In view of this study our engineers were instructed to include for engineering an amount which should not be less than 2 per cent nor more than 5 per cent of the investment in road, exclusive of engineering and land. Should a member of the engineering board believe that there are peculiar circumstances which justify the application of a lower or a higher percentage, he is instructed to bring the case to the attention of the bureau.

In the instant case the estimate was first made by the synthetical method and the figure which was used was reached. When the instructions referred to above were issued it was concluded that this figure represented a sufficient amount, and it was allowed to stand.

The tentative valuation includes a sum of $9,200 for "location engineering for a period of four months, at an average expense per month of $2,300." The property of this inclusion is questioned by the valuation committee of the National Association of Railway and Utilities Commissioners, for the reason that it represents reconnaissance, an obvious conjectural expense incurred in supposititious groping through the country for locations which are not used. Such an expense, it is argued, should not be included in the reproduction cost of a railroad, the exact location of which is known. In the construction of a new railroad it is necessary to reconnoiter, lay out lines, and engage in considerable preliminary work in order to secure the most advantageous route. Such a program is not necessary in a theoretical reproduction of a property under valuation. The inclusion of an amount to cover expenses of this character is incorrect. Cost of reproduction new is the cost of reproducing the existing line of railroad. For reasons just stated it is obvious that the figures reported as engineering in the study made by our accountants embrace expenses incident to the reconnoitering and laying of preliminary lines. However, it has been impossible to segregate these expenses, which are necessary in original construc-
183 tion but unnecessary in reproduction, and no deduction has been made on this account in the instant case. It is believed, therefore, that the application of a percentage within the limits prescribed will do full justice.

The percentage method as explained above is approved.

General Expenditures.

Items 71 to 77 of the classification of investment in road and equipment of steam roads are termed "general expenditures." The basis upon which to estimate the amount to be included for these items in the cost of reproduction new will be here considered. Item No. 76 is "interest during construction" which will be treated in a subsequent portion of this report. The accounts here involved are as follows:

71. Organization expenses.

72. General officers and clerks.
73. Law.
74. Stationery and printing.
75. Taxes.
77. Other expenditures—general.

In the tentative valuation under consideration the member of the engineering board stated a certain amount for each of these accounts. In Account No. 71 was embraced a charter fee assessed under Texas laws and incidental expenses; in Account No. 72 an estimate for general officers and clerks and expenses; in Account No. 73 a provision for what were considered to be necessary legal expenses; in Account No. 74 an allowance for stationery and printing; in Account No. 75 an amount equal to one-quarter of the total amount of taxes paid by the carrier during the year 1914. In Account No. 77 no sum was stated.

This method of estimating the amount of money which might properly be charged to these accounts was not satisfactory to the bureau. It was felt that a more appropriate basis would be to ascertain what had been charged in the past and adopt a percentage basis to determine the sum to be estimated in reproduction. With this in view our accountants made a study similar to that undertaken in connection with engineering and covering the same list of carriers. The percentage of general expenditures other than interest to all road accounts, excluding land for the different valuation districts, was as follows:

	Per cent.
Eastern	1.766
Southern	2.251
Central	1.362
Western	.838
Pacific	4.086
Average	1.930

184 As stated the roads selected were the same as those included in the engineering study and embraced many different types, some of recent construction and others which have been in existence for many years. In a number of cases it was necessary to accept the figures as shown in the carriers' books without being able to test their accuracy.

The percentage for the western district is too low and is accounted for by the fact that many of the properties considered were constructed by parent companies. A considerable part of the office work was actually done by the parent organizations, and the expenses incident thereto were not included in the accounts of the carrier under construction. On the other hand, the percentage for the Pacific district is abnormally high, due to the fact that the construction period of the Western Pacific, one of the roads included in the study, was extremely long, about seven years. Because of its mileage and capital expenditures that road dominates the

weighted average. It was thought desirable, therefore, to make an examination of individual properties where the circumstances of construction were fully known. The carriers referred to the Virginian Railroad as being such a property, and the bureau agrees that it is illustrative, because it is a high-grade road and ample time was taken to construct and equip it before operations began. The percentage in this case was found to be 1.889. The Winston-Salem Southbound is another property as to which we have satisfactory information, and the percentage shown for it was 1.271. This percentage, it is contended, is too low because a certain part of the general expenditures was alleged to have been borne by the Norfolk & Western and the Atlantic Coast Line railroads, which companies furnished the money and are owners of the road.

After careful deliberation, the bureau concluded that 1½ per cent of the amount of all road accounts, exclusive of land, would be a fair estimate for general expenditures in the case of all roads. Where, however, more than a nominal charter fee has been required, the engineers have been instructed to ascertain the amount of such fee and add it to the 1½ per cent.

The carrier contends that this percentage is too small, and that the particular group of roads selected by the accountants is not representative. It calls attention to six other roads which might have been selected, for which the average would have been between 4 and 7 per cent. In answer to this it is sufficient to state that no one knew, when the properties included in the study were selected, what the figures would show, and no attempt was made to support any preconceived theory, the sole desire being to ascertain the fact, and it is believed that the results obtained are fairly representative.

185 From what has been stated we are of the opinion that an estimate of 1½ per cent on all road accounts except land for general expenditures will do full justice to the carrier.

Cost of Obtaining Money.

Money with which to construct a railroad is usually obtained by the sale of stocks and bonds. Sometimes the money is at first borrowed on short term paper and the bonds are issued and sold at the end of the construction period. The bonds may be issued before beginning of construction and held as collateral for the short-term paper, or the bonds may be sold in advance of construction. The latter method has seldom been followed. Both methods involve expense. Short-term paper carries with it a certain charge for brokerage, generally not exceeding one-half per cent, while the sale of bonds involves a discount which includes brokerage, dependent upon the rate of interest, the length of the term, and the credit of the company.

During the early stages of our valuation work an endeavor was made to determine the cost to a carrier under valuation of obtaining money; that is to say, to ascertain the credit of the particular company and the circumstances which would surround its finan-

cing. It seemed necessary, however, to abandon this method because it was found to be an almost impossible task, and the result was misleading. The bureau has therefore assumed for this purpose that the reconstruction would be done by a company the credit of which was good and which could purchase supplies at advantageous prices. This policy having been adopted, it was necessary to determine the rate of interest. Since a railroad with good credit has no difficulty during normal times in borrowing money at 4½ per cent, it was felt that the rate of 6 per cent would be ample to cover all incidental items of expense in connection therewith.

The carrier objects to this method and states that the assumption that its credit is good enough to enable it to borrow money to build its railroad upon a 6 per cent basis is without foundation in fact, but that should an assumption such as above indicated be correct, 6 per cent is too low to cover the entire cost, which would include commissions, syndicating, and other expenses. Eight per cent is suggested as proper in the present case.

There are undoubtedly instances where it will be found that should the carriers be left entirely to their own resources they probably could not borrow money at any rate of interest in a sufficient amount to cover the entire cost of construction. Assuming that reconstruction would be done by a company the credit of which was good, the cost of reproducing properties on the basis here assumed will be fairly comparable in all cases.

186 Construction Period.

The time allowed for the construction period in cost of reproduction new is important in its relation to the amount to be allowed for interest during construction. From our examination of the records of construction in the past, it is fair to state that, so far as the expenditure of money is concerned, the construction of a railroad is properly divided into two parts—the preliminary period before the construction begins, and the period of construction itself. The first period is the time within which preliminary and location surveys are being made, and in the past its length has varied from two or three months to several years. Arrangements for securing money, rights of way, and for letting of contracts are generally consummated during this period. During this preliminary work the expenditures are necessarily small in comparison with the expenditures during the period of construction. The period when the bulk of the money is expended is that during which construction takes place.

When the valuation work was first undertaken an attempt was made to estimate the preliminary period. The records of the roads selected were so different in this respect that no satisfactory rule could be developed. In view of this and of the further fact that expenditures are small during this time it was decided to state the period required for construction only.

The construction period, as determined by our engineers, does not represent the shortest period in which the railroad could be con-

structed, but rather that period within which the work might be economically done. The usual delays which occur in normal times, due to labor and market conditions, are assumed to exist, but unusual delays, due to financial troubles and other causes peculiar to individual properties, are eliminated.

All existing means of transportation, aside from the property itself which is under reproduction, are assumed to exist. The carrier in this proceeding is crossed by several different roads and these roads are used theoretically to bring in men and materials to junction points. This enables the engineer to proceed with the hypothetical reproduction at several different places at the same time. This assumption often reduces the period allowed for reproduction materially below that which was required for the building of the property, but since the circumstances and conditions surrounding reproduction are entirely different from original construction, this method is believed to be fair.

Interest During Construction.

The rate of 6 per cent interest having been approved, it remains to consider the length of time for which this rate should be
187 applied. Interest for one-half of the construction period has been generally allowed in the valuation of public utilities. Since, however, in determining the construction period in the instant case no time has been considered for preliminary work as such, the question arises whether or not one-half of the construction period is sufficient. It is assumed by us that a railroad company would have a sufficient amount of money on hand at the beginning of each six months to cover construction expenditures for that period. A study of the active construction of certain roads shows that when expenditures begin they continue at about an even rate to the end of the construction period; that is, for the total number of months during which construction continues, the outgo per month is about uniform. Therefore, if the assumption that the money required for each six months is on hand at the beginning of that six months is reasonable, and we find that it is, time for which interest should be allowed is one-half the construction period plus three months, which will be ample to cover the relatively small amount of money which is expended prior to construction. This is the method which has been adopted by the bureau, and interest is computed upon the total amount of the road and general expenditures accounts with the exception of land and interest during construction.

A considerable part of the cost of a railroad is in its equipment. While it is true that as a general rule equipment is not purchased until the road is practically completed, and but little interest is paid on money expended for equipment before operation begins, nevertheless it is necessary to have the equipment some little time prior thereto. For this reason some provision for interest should be made. It is believed that an allowance of three months on the money expended for equipment is equitable. This rule has been adopted.

It is further claimed that at least two-thirds of the construction

period should be taken as the basis for the computing of interest. The facts of record do not show that the time allowed for interest during construction is too short and the rule announced above is approved.

The carrier claims that the method is unjust for the reason that the cost of reproduction must include the present cost of acquisition of lands and that therefore interest must be included thereon. Since the payments for land are a substantial part of the money necessarily expended in building a railroad, the figure which has been reported by us for interest during construction is claimed to be too low. Our view with respect to matters concerning land will be treated in a subsequent portion of this report.

188 Materials and Supplies and Other Working Capital.

The property of a railroad which is necessary in operation may be divided into two general classes—the plant itself and its operating assets. By the plant is meant the roadway, equipment, and other physical parts. Operating assets include materials and supplies and cash on hand.

In the accounting report which accompanied the tentative valuation and made a part thereof is an inventory of the materials and supplies on hand as of June 30, 1914. The records of the carrier show an investment of $82,943.24 in materials and supplies, while the inventory prepared by the bureau, at prices obtained from invoices rendered the carrier, shows a value of $96,857.19. No attempt has been made to ascertain depreciation with respect to materials and supplies. In all cases of new property the cost figure was applied, while for secondhand property an effort was made to apply a fair secondhand price. It should be stated, however, that there was a comparatively small amount of secondhand property. The final valuation hereafter set out also contains a comparative general balance sheet which includes the following under current assets:

Cash	$13,908.16
Net balance receivable from agents and conductors	4,324.03
Miscellaneous accounts receivable	16,395.34
Materials and supplies	82,943.24
Total	117,570.77

The carrier contends that we have erred in not including materials and supplies in the three cost values. The suggestion is made that cash items should also be included and taken at par.

In cost of reproduction new, however, the property to be theoretically reproduced is the railroad itself. It does not contemplate the inclusion of materials and supplies and cash on hand, which are so-called liquid assets, and change from day to day. The accounting report, which is a part of the tentative valuation, contains full information with respect to these items as of the valuation date. The method pursued is a compliance with the act.

Secondhand Materials.

Where secondhand materials were installed and still exist, the bureau has interpreted cost of reproduction new to mean the cost of reproducing the materials in the same condition in which they were installed. The carrier alleges that this interpretation of the word "new" is incorrect, and that market prices on valuation date for new materials of the same kind should be applied to such
189 units. The question of secondhand materials enters into the valuation of the carrier in this proceeding in Account No. 6, bridges, trestles, and culverts; Account No. 9, rails; and Account No. 37, work equipment. When secondhand materials are used in theoretical reproduction depreciation is figured upon the basis of the cost of the materials new. Secondhand materials have been used in original construction by a great many railroads, and the basis which shall be adopted for estimating the reproduction cost of such materials is therefore important.

A typical illustration of second hand materials is the logging road. In many cases such roads have been built entirely with materials which have seen previous service. The rail and equipment, for instance, may be larger and more expensive than the road would have been justified in buying if it had bought them new. Because, however, such materials would serve the purposes for which the road was built and could be secured at prices considerably below the market prices for new material of the same kind they were secured. A strict interpretation of the word "new" in estimating the cost of reproduction new of a property of that kind would require the substitution of new materials for materials which are known to have been secondhand when the road was "new" or first built. We do not think that the act requires or contemplates this. The property to be reproduced is the existing property as it was when it was put into its present service. When the records of the carrier clearly show that secondhand materials were used the cost of reproduction new will be estimated for the same kind of materials in the same condition as when installed.

Quantities and Unit Prices.

Before considering the differences which exist between the figures contained in the tentative valuation and those claimed by the carrier, it will be well to state briefly the practice of the bureau with respect to the application of unit prices.

Under date of February 9, 1915, the Commission issued its Valuation Order No. 14, known as "Order, instructions, and forms pertaining to purchases of materials, prices paid, and rates of compensation paid for labor." With respect to materials, this order required every carrier whose property was to be valued to file with us a statement of the two largest purchases of each class of material for each calendar year from 1910 to 1914, inclusive, together with net prices paid. In the event that two purchases per year had not been made,

a statement of such purchases as might have been made was
190 required. Information with respect to certain materials for the period from 1905 to 1914, inclusive, and as many as four purchases per year were in some instances required. The statement required, among other things, information as to the purpose for which the material was used, the name of the maker, the maker's catalogue number or reference, name of the party from whom purchased, and the amount of freight charges actually paid. With respect to labor, the carrier was required to report the rates of compensation paid on each of its separate divisions for each calendar year, 1910 to 1914, to all classes of employees. The rate of compensation was defined to be the usual and ordinary rate paid for the particular occupation, and required the rate for each year to be obtained by taking the governing rate on the first day of January, April, July, and October of each year and dividing the aggregate by four.

We are required to report to the Congress the cost values with respect to completed properties, and the cost of assembling must be shown in addition to the cost of materials and labor. In order to ascertain what had been expended in the past, the carriers were required to file a statement of all completed projects for which information could be furnished. After these statements were received, certain of the projects therein contained were selected and completion reports were required to be filed. In addition to this information, an accountant has been detailed in each district to bring together cost data under the direction of the district engineer.

The complement of each valuation district has, in addition to the district engineer, a corps of experienced engineers. These men have had practical experience in railroad construction in the past and are conversant with every phase of the problem. The sole purpose of these men is to apply prices to the units of property set forth in the inventory which will do justice to all concerned. These men study the cost data which have been received from carriers and exercise their judgment as to the prices to be allowed in a theoretical reproduction of the property under valuation. The cost data which are before the engineers are not controlling, but are applied with reference to the particular property the details with respect to which are well known by observation to the engineers.

The use of cost data obtained in this manner is believed to be entirely reliable since it is based upon experiences of production of railroads under similar circumstances in the past.

There is given below a table which sets forth the figures contained
191 in the tentative valuation as cost of reproduction new for certain items of the road and equipment accounts, other than lands, together with the claim of the carrier respecting those items.

Acct.	Classes.	Tentative valuation.	Claim of carrier.
	I. Road.		
1.	Engineering	$54,926	$126,700
3.	Grading	411,866	539,545
6.	Bridges, trestles, and culverts	387,792	532,222
8.	Ties	272,688	280,950
9.	Rails	525,134	538,183
11.	Ballast	210,637	287,697
12.	Tracklaying and surfacing	207,502	268,319
15.	Crossings and signs	29,565	30,451
26.	Telegraph and telephone lines	130	8,857
39.	Assessment for public improvement	.....	9,477
	II. Equipment.		
55.	Motor equipment of cars	57,020	57,780
57.	Work equipment	73,236	75,736
	III. General Expenditures.		
71.	Organization expenditures	831	51,100
72.	General officers and clerks	15,000	65,550
73.	Law	9,100	18,000
75.	Taxes	5,971	12,000
76.	Interest during construction	144,691	264,487
	Total	2,406,089	3,167,054
	Contingencies	.....	149,838
	Appreciation	.....	61,000
	Grand total	2,406,089	3,377,892

Engineering is the first item with respect to which the carrier makes a claim for an additional allowance, but in view of the fact that the amount to be set aside for this item is computed upon a percentage basis of the total amount of certain accounts, it will be considered later.

Account No. 3, grading.—The tentative valuation has fixed $411,866 under this head as the cost of reproduction new for property wholly owned and used, while the carrier claims $539,545. The amount set forth in the tentative valuation is made up as follows:

Clearing 353.63 acres, at $25 per acre	$8,841
Grubbing 41.72 acres, at $40 per acre	1,709
Earth excavation, 662,673 cubic yards, at 15 cents per cubic yard	99,401
Embankment, 1,686,817 cubic yards plus 168,682 cubic yards, 10 per cent for shrinkage, at 13.5 cents per cubic yard	250,492

Solid rock formation, 17,544 cubic yards, at 65 cents per cubic yard	11,404
Loose rock excavation, 1,473 cubic yards, at 35 cents per cubic yard	516
Hardpan excavation, 158,092 cubic yards, at 24 cents per cubic yard	37,942
Riprap, 1,054 cubic yards, at $1.50 per cubic yard	1,581
Total	411,886

Valuation sections 2, 3, 4, and 5 cover property which is jointly owned by the carrier with another carrier or carriers, and an
192 estimate for grading in these sections has been made to the extent of $2,692, made up as follows:

Earth excavation, 1,543 cubic yards, at 15 cents per cubic yard	$231
Embankment, 16,567 cubic yards plus 1,657 cubic yards, 10 per cent for shrinkage, at 13.5 cents per cubic yard	2,461
Total	2,692

The total cost of reproduction new in Table No. 1 exceeds by $20 the amount contained in the tentative valuation, which is accounted for by an error in addition in valuation section No. 6. This correction will be made.

The carrier contends that the unit prices allowed are too low. Below are given the prices which the carrier in its protest claims should be fixed:

Clearing	per acre	$35.00
Grubbing	do	52.00
Earth excavation	per cubic yard	.18
Embankment	do	.18
Loose rock	do	.43
Solid rock	do	.97

The carrier introduced testimony purporting to show that the clearing necessary in a theoretical reproduction would cost $40 an acre and grubbing $45 an acre. The manager of the carrier testified that he thought $27.50 to $30 per acre would cover the cost of clearing and $35 to $40 per acre the cost of grubbing. The claim for $52 per acre for grubbing was withdrawn and the $40 per acre unit price in the tentative valuation for this item is agreed to. There is no dispute as to quantities other than results from the application of present as compared with original topographical conditions, which we have already discussed and determined in this report.

The $25 per acre for clearing was arrived at after the consideration of contracts for work of this character which had been performed in the vicinity and nothing has been submitted in this

record to show that it is unreasonably low. In fact the opinion of the manager of the carrier, who has been with the property since it was built, that $27.50 to $30 should be allowed, may be said to support the price used when it is borne in mind that his testimony was opinion testimony unsupported by prices actually paid for similar work, and that his interest in the property might naturally influence his opinion so as to secure an amount which would beyond question fully recompense the carrier. The reasonableness of the unit price of $25 per acre for clearing is established.

The claim of the carrier with respect to certain other items under this head has been modified to the following basis:

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		Cents.
Loose rock	per cubic yard	38
Solid rock	do	80
Hardpan	do	35

In estimating the price to be paid for earth excavation and earth embankment one of two bases may be used, the one-way basis or the two-way basis. When the one-way basis is adopted the price is estimated per cubic yard for the amount of material which is to be taken out of the cut. A certain limit of distance beyond which a contractor will not be expected to haul the excavated material is fixed, usually 500 feet. If it is necessary to transport the material beyond the free-haul distance the contractor is paid an additional amount per cubic yard for such haulage. The amount of earth contained in the embankment is not measured or paid for under the one-way basis. Under the two-way basis the amount of earth taken from the cut is measured and paid for; likewise the amount of earth in the fill is measured and paid for. Generally the question of the haul of the excavated material plays no part in the determination of the price to be paid under this method.

In the instant case the two-way method has been adopted. The prices which have been allowed for excavation and embankment were fixed by the engineer as the result of a study of 42 contracts for similar work in the same general section of the country. These contracts were executed during the period 1896 to 1912. The prices therein were quoted on the one-way basis and the two-way basis, but in the majority of instances the two-way basis was used, the price paid ranging from 9 to 19 cents per cubic yard.

The testimony of the carrier was submitted by three contractors and three railroad engineers. The testimony of all these witnesses was practically the same to the effect that from 17 cents to 19 cents per cubic yard would be a fair price for the earth excavation and embankment necessary in a theoretical reproduction of the road. The testimony was confined to expressions of opinion as to the proper price, and was practically unsupported, although one engineer submitted figures showing the cost of work in changing the alignment and grade of a railroad already constructed. It is well understood that grading of this character is generally more expensive than

in original construction, and the figures in this instance have little evidential value.

Another observation should be made. It has been the contention of the carrier that a great part of the earth in its right of way is what is known as "black waxy." Earth of this character is extremely difficult to handle in any kind of weather. During a wet period it is sticky and in dry weather it solidifies. This kind
194 of earth is easily recognized, and the record establishes the fact that not more than 30 per cent of the right of way is in fact "black waxy." It is fair to assume, therefore, that the witnesses for the carrier based their estimates upon the assumption that the major part of the soil which would be encountered in a reproduction of the road would be "black waxy," and since that is not a fact their estimated prices are undoubtedly too high. There is nothing of record which would justify a change in the price of 15 cents per cubic yard for excavation.

For earth embankment, a price of 13½ cents per cubic yard has been fixed. The contention is made that there is no warrant for a difference in price for excavation and embankment. When the field work in this case was completed, our engineer reached a price of 15 cents for embankment. The quantity to which this price was applied was limited to the exact measurements of embankments. It is well known that in order to make an embankment of specified dimensions, it is necessary to place in that embankment a certain amount of additional earth for shrinkage. In the territory through which this road runs, it has been customary for the contractor to quote his price upon the basis of the size of the embankment desired and to place a sufficient quantity of earth in the embankment to produce it. In this way the extra amount of earth which must be furnished to take care of shrinkage is given consideration in the price. This method was followed in the instant case. However, after conference between officials of the bureau, it was decided that the best way to treat this matter was to compensate for shrinkage in the quantities. This procedure contemplates the addition of a certain amount to the quantities which are found in the embankment after measurement. Ten per cent was arrived at, as a proper percentage to allow for such shrinkage. After it was decided to adopt this method it was necessary, in order to avoid duplication, to reduce the price applied by 10 per cent. This resulted in a price of 13½ cents per cubic yard for embankment as compared with 15 cents per cubic yard for excavation. It will be noted that under the two methods of compensating for shrinkage, the amount arrived at is substantially the same. From the facts of record we are of the opinion that the price of 13½ cents per cubic yard employed for the exact quantities found in embankments, increased by 10 per cent to take care of shrinkage, will do full justice.

The same character of evidence was introduced by the carrier with respect to loose-rock excavation, solid-rock formation, and hardpan. There is nothing of record, however, which would warrant a change in the prices found.

195 The cost of reproduction new of grading, as set forth in the tentative valuation, is approved.

Account No. 6, bridges, trestles, and culverts.—The tentative valuation shows as the cost of reproduction new $387,792 for bridges, trestles, and culverts wholly owned and used, and the carrier claims $532,222. The items concerning which there is dispute are pile and timber trestles, bois d'arc piles, treated pine piling, untreated longleaf pine piles, untreated pine caps, bois d'arc caps, untreated pine stringers, untreated pine guard rails, and secondhand dump planks.

An exhibit was introduced by the carrier to show that the prices used by our engineers for the materials named above, with the exception of bois d'arc piles and caps, are too low. This exhibit was based upon prices claimed to have been paid by the Atchison, Topeka & Santa Fe Railway Company for similar work. In this connection it should be stated that the prices applied by the bureau of valuation, under this account, were arrived at after consideration of returns made in compliance with Valuation Order No. 14 heretofore referred to, and the Santa Fe project, concerning which the exhibit referred to above was filed, was considered by the bureau. The carrier introduced evidence to show that the return under Valuation Order No. 14, for this particular piece of work, was made in haste and the prices contained therein were not correct, and that the basis contained in the exhibit introduced at the hearing should be substituted therefor. It should be further stated, however, that the return referred to was sworn to at the time of its submission. From a careful review of the evidence we are of the opinion and find that the prices adopted by the bureau will do full justice.

With reference to the bois d'arc piles and caps considerable testimony was introduced to show that the supply of bois d'arc is exhausted, at least so far as the larger sizes are concerned. Our engineer in charge of the valuation work with respect to this carrier is of the opinion, however, that sufficient bois d'arc to reproduce the property of the carrier in kind could be obtained in eastern Texas. It was also testified by the carrier that some of the bois d'arc in place upon the line of the carrier has been in place for 60 years and that it is practically indestructible. Its life is claimed to be at least 100 years, while that of treated pine, the best known substitute, is only 12 years. From this it is argued that it would be unfair in reproduction to substitute material which lasts only 12 years for bois d'arc, the life of which is indefinitely long. We are of the opinion that the question of whether or not the supply of bois d'arc is exhausted is immaterial. We are required to estimate the cost of reproducing the railroad as it exists on valuation date. In many instances it will be impossible to reproduce in kind, and we must

196 therefore reproduce a plant by the substitution of the best known available and practicable materials. In the instant case such a substitute would be treated pine. Since the current price for treated pine is approximately the same as that used for bois d'arc, based upon past sales of these materials, it is clear no injustice would be done if a substitution became necessary, which is

not entirely clear from the record. It follows that the prices taken in the tentative valuation are approved.

In the construction of the road certain secondhand dump plank was used. In reproduction the prices for secondhand plank in the same condition as when installed have been adopted. Objection is made that this should not be done, but that the prices of new plank should be used. From our discussion of secondhand materials, in an earlier part of this report, it follows that the action of the bureau in this regard is approved.

Account No. 8, ties.—The tentative valuation allows $272,688 for ties wholly owned and used, whereas the carrier claims $280,950. The only item in dispute is burnettized pine ties. We have applied a unit price of 56 cents per tie, while the carrier claims 68¾ cents. There are 64,081 of these ties.

In valuation section No. 2, jointly owned by the carrier and the Houston & Texas Central Railroad Company, there are 71 of these ties, and in valuation section No. 5, jointly owned by the carrier and the St. Louis Southwestern Railway Company of Texas, there are 144.

The bureau is convinced that the price of 56 cents per tie which was applied is too low and recommends that it be increased to 69 cents per tie. The cost of reproduction new of ties wholly owned and used will be increased to $281,112, and the cost of reproduction less depreciation to $140,556. The cost of reproduction new of ties jointly owned and used by the carrier and the Houston & Texas Central Railroad in valuation section No. 2 will be increased to $393 and cost of reproduction less depreciation to $197. The cost of reproduction new of ties jointly owned and used by the carrier and the St. Louis Southwestern Railway Company of Texas will be increased to $1,875 and the cost of reproduction less depreciation to $938.

Account No. 9, rails.—The tentative valuation sets forth $525,134 as the cost of reproduction new of rails wholly owned and used, whereas the carrier claims $538,183. A price of $34.55 per ton has been applied as the cost of new rails and a price of $24 per ton for relay rails. No protest has been directed against the price for new rails, but the carrier claims that not less than $29.50 per ton should be applied to relay rails. No testimony, however, as to the insufficiency of the unit price has been submitted. In its briefs the carrier contends that the price of $24 per ton should be increased to $34.55 per ton upon the premise that the price of new
197 rails should be set forth in cost of reproduction new, notwithstanding the fact that relay rails were used in original construction. This contention has been disposed of by the discussion relating to "secondhand materials."

As nothing in this record tends to show that $24 per ton for relaying rails is too low, the amount included in the tentative valuation under this head is approved.

Account No. 11, ballast.—The sum of $210,637 has been estimated as the cost of reproduction new of ballast wholly owned and used, and the carrier claims $287,697.

The ballast which has been used by the carrier is made up of cinders, sand, crushed stone, and burnt clay. The prices reported by us in reproduction and those claimed by the carrier are given below:

	Reported, per cubic yard.	Claimed, per cubic yard.
	Cents.	Cents.
Cinders	15	36
Sand	15	36
Crushed stone	65	80
Burnt clay	80	130

The cinders which are in the roadbed were produced by the carrier in the course of its operations. For the purpose of reproduction it has been assumed that the cinders would be obtained in the same manner. Under our accounting rules carriers are not permitted to charge to the ballast account any amount for cinders which are secured in this way, although they are permitted to charge for the expense of placing the cinders at the point where they are to be used. The price of 15 cents is made up of 10 cents for loading and 5 cents for unloading, to which has been added one-half cent per ton-mile for an estimated average haul. No testimony has been submitted which would justify a change in this amount.

The sand which was used by the carrier was obtained from sand pits along its right of way. In the theoretical reproduction of the property it has been assumed that the same pits would be available. Nothing has been allowed for the sand itself. This is fair when it is borne in mind that our land report includes the value of the sand pit before the sand is removed. The price of 15 cents embraces 10 cents for loading and 5 cents for unloading. One-half cent per ton-mile for an estimated average haul has been added to this figure. Testimony was offered to show that the cost of loading sand is from 12 to 15 cents per cubic yard, but our data, based upon actual contracts for similar work, justify the price of 10 cents.

No testimony was introduced with reference to the price used for crushed stone.

198 It is with respect to burnt-clay ballast that the testimony of the carrier is principally concerned. Its chief witness introduced an exhibit purporting to show that the price of burnt clay ballast produced upon the St. Louis Southwestern Railway at the so-called Josephine, Tex., pit was $1.60 per cubic yard. This exhibit was analyzed by our accountants and certain charges were found in the account which were improper. After eliminating the items which it is known should not have appeared in the account, the price per cubic yard was materially reduced. However, a further consideration of the facts of record leads to the conclusion that a price of 80 cents per cubic yard is too low, and that a price of $1 per cubic yard should be accepted. The tentative valuation will be corrected upon this basis.

Account No. 12, tracklaying and surfacing.—The estimate of our engineer as to the cost of reproduction new of tracklaying and surfacing wholly owned and used, as set forth in the tentative valuation, is $207,502, whereas the carrier claims $268,319. At the time the estimate was made, the engineering program for the reproduction of the property contemplated the ballasting of the road before operations began. When this is done, it is unnecessary to provide as good a surface as when the ballasting is done after operations begin. All that is necessary is to provide a sufficient surface to permit the running of a work train over the tracks for transporting the ballast. A surface of this kind is called a running surface. After further consideration, our engineer believed that the better procedure to follow would be to assume that ballasting would take place after operations began. This course having been adopted, it was necessary to allow for a surface of sufficient durability to provide for the movement of traffic until the ballast was placed in position. This is called a full earth surface and is necessarily more expensive to construct than a running surface. On account of this change in the program the bureau has recommended an increase in the amount estimated under this account. In the estimate $780 per mile of road has been employed, and the bureau suggests that this amount be increased by $120 per mile. We are of the opinion that $900 per mile of road for tracklaying and surfacing is reasonable and the valuation will be corrected upon this basis.

Account No. 15, crossings and signs.—The tentative valuation has stated for crossings and signs wholly owned and used $29,565, whereas the carrier claims $30,451. The carrier contends that the prices for excavation and embankment should be increased. It alleges that the same prices for these items should be applied in this account as are applied in Account No. 3, grading. This is correct, and that is what was done in arriving at $29,565. We have
199 approved a price of 15 cents per cubic yard for excavation and 13½ cents per cubic yard for embankment in the grading account. This is equally true with respect to property jointly owned and used.

Account No. 26, telegraph and telephone lines.—There has been included in the tentative valuation for telegraph and telephone lines wholly owned and used $130, while the carrier claims $8,857. The $130 covers the estimated cost of reproduction of a telephone line from the general offices of the carrier to its machine shops, both at Terrell.

The telegraph line along the right of way of the carrier consists of three wires from Ennis to Kaufman, four wires from Kaufman to Terrell, three wires from Terrell to Greenville, and three wires from Commerce to Paris. There are also three wires from Greenville to Commerce paralleling the right of way of the St. Louis Southwestern Railway Company of Texas. The carrier has the exclusive use of one wire from Ennis to Paris and the Western Union Telegraph Company has the exclusive use of the remaining wires. The labor of constructing all the telegraph lines from Ennis to Paris was performed by the carrier but the materials were furnished and are owned

by the telegraph company. In view of the fact that title to this property is in the telegraph company the bureau allowed nothing to the carrier in estimating the cost of reproduction new.

A telegraph line is necessary in the conduct of the business of the carrier and for the purposes of estimating cost of reproduction new of its property it is assumed that it would equip itself with this facility in the same manner that it did originally. Therefore the carrier would be obliged to perform the same amount of work in a theoretical reproduction of the property as it did in original construction. Such work estimated at prices prevailing on valuation date would amount to $8,715. This amount will be added to the cost of reproduction new as stated in the tentative valuation.

Account No. 39, assessments for public improvements.—For reasons set forth in an earlier part of this report, the omission under this head is approved.

Account No. 1, engineering.—The general principles which shall govern in estimating this account have already been discussed and stated. The tentative valuation has included on account of engineering $54,926, whereas the carrier claims $126,700. The figure was arrived at upon the synthetical basis, before the percentage plan was adopted, and represents the estimate of our engineer for property wholly and jointly owned and used by the carrier. When the percentage plan was adopted by the bureau, the allowance figured about 2.15 per cent of the total amount of investment in the road accounts exclusive of engineering and land, and it was allowed to stand.

200 The sum claimed by the carrier is between 5 and 6 per cent of the total amount of such accounts. On account of the increase in the estimates for cost of reproduction new of certain items made herein in the road accounts, the amounts stated above represents less than 2 per cent and must be increased. Upon further consideration we think that while the reproduction of the road would present no engineering difficulties, the percentage should be increased to 2¼ per cent. Upon this basis the amount of engineering for property wholly owned and used would be $58,773; for valuation section No. 2, jointly owned by the carrier and the Houston & Texas Central Railroad, $45; for valuation section No. 3, jointly owned by the carrier and the Texas & New Orleans Railroad, $58; for valuation section No. 4, jointly owned by the carrier and the Missouri, Kansas & Texas Railroad of Texas and St. Louis Southwestern Railway of Texas, $113; and valuation section No. 5, jointly owned by the carrier and the St. Louis Southwestern Railway Company of Texas, $814. These amounts will be shown in the final valuation, which will also show the Texas Midland's assignable proportions thereof.

Account No. 55, motor equipment of cars.—The tentative valuation states the cost of reproduction new of motor equipment of cars wholly owned and used as $57,020, whereas the carrier claims $57,780. The carrier owns two motor passenger cars, and at the time of their purchase had no one in its employ capable of operating them. While it is not entirely clear from the record, it appears that these cars were delivered by the manufacturer ready for opera-

tion and that no setting-up charge was necessary. However, at the request of the carrier, the manufacturer loaned the services of two men to educate employees of the carrier to operate these cars. The expenses in connection with the employment of these men amounted to $760, and it is claimed that this figure should be included in the cost of reproduction new. The exclusion of this amount from the tentative valuation is approved.

Account No. 57, work equipment.—The tentative valuation states the cost of reproduction new of work equipment wholly owned and used as $73,236, whereas the carrier claims $75,736. The item in dispute in this account is a locomotive crane. The carrier purchased this crane secondhand for $5,000. It is asserted that previous to its acquisition the crane had been in service only four or five days, and that it was worth its market value new, or $7,500. The tentative valuation placed it as $5,000 plus $831 freight from Cleveland, as the cost of reproduction new, while the carrier contends that $7,500 plus $831 freight should be allowed. The estimate of $5,000 was based upon the market price of a crane in the same condition as this one was when it was purchased by the carrier and placed in
201 its present service. This method was approved in our previous discussion relative to "secondhand materials."

General Expenditure Accounts Nos. 71 to 77, Except Account No. 76, Interest During Construction.—In cost of reproduction new, under general expenditures, exclusive of interest during construction, the tentative valuation fixed $32,002, whereas the carrier claims $147,750. During the progress of the work of valuation in this case the engineer built up the general expenditure accounts by estimating each account, but subsequently the bureau adopted a method of including 1½ per cent of the total amount of investment in the road accounts, exclusive of land, plus any charter fee or fees which are more than nominal in amount. We have approved this method in a previous portion of this report. No unusual charter fee has been paid by the carrier in this proceeding, and in the cost of reproduction new, under the general expenditure accounts figured upon the basis set forth an amount of $40,054, will be inserted in the valuation. Estimates upon the same basis will be included in the report on the property jointly owned and used.

Account No. 76, Interest During Construction.—The tentative valuation found $144,691 as the cost of reproduction new of interest during construction, whereas the carrier claims $264,487. In estimating the figure the engineer considered the amount of money needed each month in the reproduction of the property based upon the program of construction, and applied the interest rate to one-half of the total expenditures in the road accounts, with the exception of land, for the total period allowed for construction. The method which the bureau has adopted with respect to this item has been discussed and approved in an earlier part of this report. In accordance with that method $144,280 will be inserted under this head for property wholly owned and used. This figure is computed at 6 per cent on the total investment in the road and general expenditures accounts, with the exception of land and interest during

construction, for one-half the construction period, plus three months. To this has been added 6 per cent on the total investment in the equipment accounts for three months. Interest during construction figured upon this basis will be included in the valuation of property jointly owned and used.

Contingencies.—In the tentative valuation we did not make any allowance for contingencies as such, and the carrier claims that $149,838 should be arrived at under this head. We have discussed and approved the action of the bureau in excluding this item.

Depreciation.

The act requires us to report in detail as to each piece of property "the cost of reproduction less depreciation." In complying
202 with this requirement the bureau has treated depreciation as the exhaustion of capacity for service. It has inquired how much of such capacity existed when new, what part has been used up, and what part still remains. It states the remaining capacity as a fraction of which the total is the denominator and the part remaining the numerator. Taking cost of reproduction new the depreciation which has already accrued is subtracted, due consideration being given to salvage or scrap when this exists, and the remainder is given as cost of reproduction less depreciation.

The carrier insists that this conception of depreciation is wrong, that the inquiry should be whether the property is in 100 per cent efficiency. So long as it is maintained at 100 per cent efficiency, or what comes to the same thing, so long as there is no deferred maintenance, there can be no depreciation.

This is clearly stated in the brief of the carrier, where it is said:

> It is apparent, from the testimony received on the subject of depreciation and from the questions and statements of the Director during the introduction of the same, that *the principal difference is one of definition of depreciation.* The witnesses called by the carriers—men of candor, ability and experience—while fully recognizing deterioration from age and use and the necessity of repairs and replacements of perishable elements, state that *in the absence of deferred maintenance there is no depreciation.*

It will be seen, therefore, that the question presented by the record in this case for determination touching depreciation is whether the theory of the bureau or that of the carrier is correct.

When the act was passed the phrases "cost of reproduction new" and "cost of reproduction less depreciation" had come to have a clearly defined and well understood meaning. The conception of depreciation as used in this connection was the equivalent of that put upon it by the bureau. There were differences of opinion as to the part which physical deterioration and functional depreciation should play and all persons were not agreed whether depreciation and life were essentially identical; that is, whether an article might not depreciate more rapidly in the first years of its existence than in

the last, or vice versa, but all were agreed upon the fundamental concept that depreciation means decline in value due to loss of capacity for service. An article was assumed to have incorporated in it a certain amount of use when new; a certain part of that use had gone; and so much remained.

Reference might be made to hundreds of instances in which this idea of depreciation when the act was passed had been used in valuation proceedings by individuals, by commissions, and by courts. It is doubtful if any case can be found where it had been deliberately assumed that depreciation and deferred maintenance were synonymous.

203 Not only have valuators and utility commissions adopted this view of depreciation, but the same definition has been assumed and acted upon by courts, including the Supreme Court of the United States.

This question was first definitely before that court in *Knoxville* v. *Water Co.*, 212 U. S., 1. It was held that in determining the value of a water plant upon the basis of reproduction cost, the depreciation which had already accrued must be taken into account. It is evident from the language of the opinion that the depreciation which the court had in mind was exactly the kind of depreciation which the bureau has applied. The court said, at pages 9 and 10:

> The cost of reproduction is one way of ascertaining the present value of a plant like that of a water company, but that test would lead to obviously incorrect results if the cost of reproduction is not diminished by the depreciation which has come from age and use. * * *
>
> * * * The items composing the plant depreciate in value from year to year in a varying degree. Some pieces of property, like real estate, for instance, depreciate not at all, and sometimes, on the other hand, appreciate in value. But the reservoirs, the mains, the service pipes, structures upon real estate, standpipes, pumps, boilers, meters, tools and appliances of every kind begin to depreciate with more or less rapidity from the moment of their first use. It is not easy to fix at any given time the amount of depreciation of a plant whose component parts are of different ages with different expectations of life. But it is clear that some substantial allowance for depreciation ought to have been made in this case. * * *

On pages 13 and 14 the following occurs:

> A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was

at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stock holders, and, in the case of a public service corporation at least, its plain duty to the public.

This case is full authority for the proposition that depreciation is not deferred maintenance but covers loss of capacity for use due to age, inadequacy, etc.

The Supreme Court approves the same idea of depreciation in *Cedar Rapids Gas Co.* v. *Cedar Rapids, supra.* The report of that case does not clearly show the manner in which depreciation was treated, but the record does. The master determined the cost of reproduction and subtracted from that the depreciation estimated according to the rule approved by the court in the *Knoxville*

204 *Water Case, supra.* The gas company did not attack the correctness of this method, but claimed that a sufficient amount was not allowed for depreciation in stating its annual net return. The valuation as fixed by the master and by the court below was approved by the Supreme Court at page 670 in the following language:

> In this case the court fixed a value on the plant that considerably exceeded its cost and estimated that under the ordinance the return would be over 6 per cent. Its attitude was fair and we do not feel called upon to follow the plaintiff into a nice discussion of details. We perhaps should have adopted a rule as to depreciation somewhat more favorable to the plaintiff, or, it may be, might have allowed this or that item that the state court struck out, but there is nothing of which we can take notice in the case that could warrant us in changing the result or in saying that the plaintiff did not get as much as it could expect when leave was reserved for it to try again.

To the same import is *Des Moines Gas Co.* v. *Des Moines, supra.* The questions presented to the court in this case were upon going-concern value and the cost of replacing certain pavement, but the method of valuation was approved. The master had determined the value of the property by ascertaining the cost of reproduction new and subtracting therefrom depreciation. That this depreciation which the court approved was not mere deferred maintenance but was estimated upon the theory applied by the bureau clearly appears from the language of the court on pages 161 and 162:

> What is called in this summary "the present value of physical property," the report shows was arrived at by the master in the manner following: He first found what he thought was the base value of the property, i. e., "what it would cost to produce it at the present time new, without adding thereto any overhead charges." This figure he fixed at $1,975,026. To this he added overhead charges, 15 per cent—$296,254. From this he deducted depreciation, $333,878, leaving as the value of the property thus ascertained, $1,937,402.

The *Minnesota Rate Cases, supra,* are full authority for this same proposition. The question before the court was upon the value of the property of certain carriers. The master in determining this

value had ascertained the cost of reproduction new but had declined to make any deduction on account of depreciation, holding that appreciation in its various forms would more than offset depreciation. This method of treatment was disapproved by the Supreme Court, which held that appreciation if it existed should be shown and that depreciation must be subtracted.

What the court meant by depreciation clearly appears from the opinion, where on pages 456 and 457 it is said:

> The master allowed the cost of reproduction new without deduction for depreciation. It was not denied that there was depreciation in fact. As the master said, "everything on and above the roadbed depreciates from wear and weather stress. The life of a tie is from eight to ten years only. Structures become antiquated, inadequate,
> and more or less dilapidated. Ballast requires renewal, tools
> 205 and machinery wear out, cars, locomotives, and equipment, as time goes on, are worn out or discarded for newer types." But it was found that this depreciation was more than offset by appreciation; * * *.
>
> We can not approve this disposition of the matter of depreciation. It appears that the master allowed, in the cost of reproduction, the sum of $1,613,612 for adaptation and solidification of roadbed, this being included in the item of grading and being the estimate of the engineer of the state commission of the proper amount to be allowed. It is also to be noted that the depreciation in question is not that which has been overcome by repairs and replacements, but is the actual existing depreciation in the plant as compared with the new one. It would seem to be inevitable that in many parts of the plant there should be such depreciation, as for example in old structures and equipment remaining on hand. And when an estimate of value is made on the basis of reproduction new, the extent of existing depreciation should be shown and deducted. This apparently was done in the statement submitted by this company to the Interstate Commerce Commission in the *Spokane Rate Case* in connection with an estimate of the cost of reproduction of the entire system as of March, 1907. (See 15 I. C. C. Rep. 395, 396.) * * *

The *Knoxville Water Case* was decided in 1909, the *Minnesota Rate Case* in 1913. In the interval much had been said upon this subject of depreciation but the above quotation clearly shows that the Supreme Court had in no respect departed from the rule originally laid down.

It may also be noted that the view of our own court of final resort is identical with that adopted in England as appears from *National Telephone Co.* v. *His Majesty's Postmaster General*, 16 A. T. & T. Co. Com. Leaflets, 491, 509. That case grew out of the taking over by the English government of the property of the National Telephone Company and the Court of the Railway & Canal Commission of Great Britain held that depreciation must be deducted from cost of reproduction and that it should be reckoned upon the straight-line method, exactly as has been done in the pending case.

It is clear, therefore, that when the act was passed, the word "depreciation" as used in the phrase "cost of reproduction less depreciation" had acquired a definite meaning. It must be assumed that Congress used the word in that sense. Nor is there to-day any other recognized meaning. We approve and adopt the definition of depreciation which the bureau has applied in this case.

While this disposes of the general contention made by the carrier upon this record and while no general discussion of the evidence presented seems necessary, a word should perhaps be said as to one phase of that testimony.

Many witnesses were produced by the carrier who testified that certain articles, especially rolling stock, could by repairs and renewals be indefinitely continued in service and that therefore it was impossible to assign to such articles a total life or a remaining life.

This testimony does not tend to support the contention of
206 the carrier that depreciation and deferred maintenance are identical. Even though it may be possible to prolong without limit the life of a car by supplying different parts as they wear out, it would by no means follow that an old car is of the same value, estimated either in dollars or in service units, as a new car; the real point of the testimony is that the method of the bureau can not as a practical matter be applied.

This testimony does not state the exact fact. Cars do go out of service, but it is true that ordinarily a new car of the same type would not be ordered to replace the old car. In other words, cars are ordinarily sent to the scrap heap because they are obsolete or inadequate rather than because they can not be repaired.

That this fact is fully recognized by the bureau in its depreciation methods will be seen by observing the manner in which a car, for example, is depreciated. While the life of the car itself may be indefinitely prolonged, the different parts of that car wear out and must be replaced. The car is therefore divided into three such parts, the trucks, the underframe, and the body, and each one of these parts is depreciated by itself. The three are then combined into a weighted average from which the condition per cent of the car is determined. The weighted average may be taken itself as the condition per cent or may be reduced if the type of the car is such that its use will not be continued in the future.

The same rule is applied to locomotives and other rolling stock and also in a degree to certain buildings and structures.

While no general attack was made upon the manner in which depreciation had been estimated in case of the Texas Midland, if the principle underlying our methods was correct, there is a suggestion that too short a life has been applied to rail in the main track and to bois d'arc timber in the various uses where it is found. In the tentative report 25 years had been named as the life of the rail in the main line. After conference between the carrier and the bureau the bureau recommended that this item be increased to 40 years, which appears to be sufficient, although no definite figure can be named with absolute certainty. The life of bois d'arc has for the purpose of this case been taken as 100 years, which would not seem to require revision.

Lands.

The protest raises two questions, which in fact are one: (1) Shall the Commission ascertain and report the reproduction cost of carrier lands, and (2) shall the Commission ascertain and report the present cost of condemnation and damages or of purchase of the carrier's lands? Together these questions present the issue as to the duty of the Commission to report the reproduction cost of lands.

207 What is meant by present value, as the term is used in the tentative valuation, is thus defined by the director of valuation:

Present value * * * is arrived at by ascertaining the number of acres of land owned or used by the carrier for its purposes as a common carrier and multiplying this acreage by a market value determined from the present market value of similar adjacent and adjoining lands. Due allowance is made for any peculiar value which may attach by reason of the peculiar adaptability of the land to railroad use.

Nothing is included for the expense of acquisition, nor for severance damages, nor for interest during construction.

The second paragraph in the act, entitled "First," is general in terms, and directs the Commission to ascertain and report in detail as to each piece of property owned or used by the common carrier under investigation for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reasons for their differences, if any. There is no substantial question raised by the protest as to the reporting of original cost to date of lands. The essential question is with respect to the reporting of the cost of reproduction new.

The paragraph of the act entitled "Second" requires:

Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

The paragraph entitled "Third" relates to property held for purposes other than those of a common carrier; and such investigation and report is required to show separately such property, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

The sixth paragraph, entitled "Fifth," relates in part to land grants, which are not here involved. The paragraph also provides:

The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the government of the United States or by any state, county, or municipal government, or by individuals, associations, or corporations.

It was suggested upon argument that the paragraph entitled "Second" could apply only to properties as to which there had been an original cost, and that lands which cost the carrier or its predecessors nothing were governed by the paragraph entitled "Fifth." It was urged that lands which cost the carrier nothing were to be excluded from the direction in paragraph "Second" as to the ascertainment of the original and present cost of condemnation
208 and damages or of purchase in excess of such original cost and present value. Unless the present cost of condemnation and damages or of purchase is to be reported, which is not contemplated by the tentative report, it is unnecessary to construe these two paragraphs with respect to this contention. Applying familiar rules of statutory construction, the fact that lands, rights of way, and terminals are given specific detailed treatment in paragraphs "Second" and "Fifth" of the act points out that the latter specific requirements are to be followed rather than the preceding general language.

However, the direction in paragraph entitled "Second" for the ascertainment of the present cost of condemnation and damages or of purchase in effect calls for a finding as to the cost of reproduction of these lands. Must this be done, and can this be done? It seems elementary that the cost of reproduction can be estimated only by assuming that the thing in question is to be produced again, and that if it is to be produced again, it is to be taken as not existent. It seems sophistry to contend that lands of the railroad can be produced again at a cost to the railroad without first making the assumption that they are no longer lands of the railroad; and this necessary assumption carries with it the mental obliteration of the railroad itself.

Considerable testimony was produced to the effect that in the acquisition of a railroad right of way it is necessary for the carrier to pay sums in excess of the value of the land if measured by the present or market value of similar contiguous lands, and this because of the elements which have been enumerated and embraced in the protest, such as cost of acquisition, damages to the severed property, cost of buildings and other improvements, accrued taxes and various incidental rights. It was testified that inquiry had shown that a relationship could be found in particular cases between the sums which the carrier must pay and the present or market value of a like area of similar, contiguous property; and it was claimed that such sum could be estimated in advance of construction within a few per cent of the amount which would actually be required. There is also testimony that certain state commissions, in attempting to determine the cost of reproduction of railroad lands, had made use of multiples of the value of adjacent, similar land for this purpose.

But it will be observed that in each of these cases, other than the state commission valuations, the testimony before us related to the actual production of a railroad where no railroad had been before; and in none of these cases did the facts exist which necessarily must be assumed for a rational conception of the process of reproduction. That there is a marked difference between assuming in advance the

total cost of acquisition, whether as the result of condemna-
209 tion and damages paid or of purchase, in excess of the present value of similar lands in the vicinity, when no railroad has been constructed or is in operation, and the attempt to ascertain and state the cost of reproducing or reacquiring, at the present time, lands which actually have been severed from the adjacent property, have been converted into a railroad, and are being occupied by an operating rail carrier, seems clear.

We are unable to differentiate the character of testimony before us from that which was before the Supreme Court in the Minnesota Rate Cases, supra. That decision, rendered June 9, 1913, slightly over three months after the enactment of the act, was the climax of a long series of attempts made by various state commissions and courts to apply the cost of reproduction theory to railroad lands.

The Supreme Court pointed out the nature of the assumptions which must be made in the endeavor to apply the cost-of-reproduction theory to lands. In those cases was involved the estimate of the value of the property of the railroad within the state of Minnesota as a necessary factor in determining whether the legislative-made rates at issue were confiscatory. The question presented, said the Court, was as to the soundness of the underlying estimate of value, and whether it might be accepted as a basis for a finding that the rates were confiscatory.

In the master's report was an item for "lands for right-of-way, yards, and terminals, $21,024,562," which did not include any improvements. This value was arrived at by adding 5 per cent to the appraisement of the terminal properties "for the cost of acquisition and consequential damage," and 25 per cent was added in the case of the Duluth terminals for railway value, cost of acquisition, and consequential damages. The manner in which the base figure was deduced is afterwards stated herein. There was a protest by the state authorities against the sum so reported, and the court thus summarizes the basis for the protest:

It is contended that the valuation was made upon a wrong theory; that it is a speculative estimate of "cost of reproduction"; that it is largely in excess of the market value of adjacent or similarly situated property; that it does not represent the present value, in any true sense, but constitutes a conjecture as to the amount which the railway company would have to pay to acquire its right-of-way, yards and terminals, on an assumption, itself inadmissible, that, while the railroad did not exist, all other conditions, with respect to the agricultural and industrial development of the state and the location, population, and activities of town, villages, and cities, were as they now are. [P. 444.]

The method pursued in ascertaining the base figures is thus stated by the Supreme Court:

(*a*) *Lands outside Terminals.*—The complainants' witness was
Mr. Cooper, the land commissioner of the company, who has
210 charge of the land grants for its entire system, of its right-of-way and land purchases, and has had a wide experience in

connection with land values along the lines of the railway. In the latter part of 1906, the state notified the company to report the value of its properties, requiring a statement in one column of the "market value" and in another column of the "value for railway purposes." Mr. Cooper was instructed to prepare the valuation for this report. From the information he received in special inquiries, and his own knowledge, and following what he understood to be the instructions from the state, he set down under the heading of "market value," not the market value in the proper sense of that term, but what in his judgment it would cost the railroad company to acquire the land. This included an excess which he estimated the company would have to pay over the market value of contiguous and similar property if it were called upon to undertake such a reproduction of its right-of-way. It did not, however, embrace an allowance for payments which might have to be made for improvements that possibly might be found upon the property in such case, or for the consequential or severance damages which might possibly have to be met, or for the expense of acquisition. These supposed additional outlays he undertook to estimate. For this purpose he increased the "market value" as stated (in the case of agricultural lands generally multiplying it by three) and thus reached the amount set down as the "value for railway purposes." [P. 445.]

Local real estate experts were employed to appraise the terminal properties at St. Paul, Minneapolis, and Duluth. They were instructed "to make a conservative report of the cost of reproducing the properties owned by the company in each of their respective cities." Mr. Cooper, after discussing with these experts the estimates made by them, employed his own knowledge and formed his own judgment, which he reported to the state under the heading of "market value." His estimate of market value was "what it would cost the company to purchase these lands, exclusive of improvements that might be made upon them, severance and consequential damages and expenses incident to acquisition." The master adopted the Cooper figures without change as to the St. Paul and Minneapolis terminals, and added 5 per cent to cover the cost of acquisition and consequential damages. As the Duluth appraisement seemed to have been based upon the ordinary values of real estate, and not on as liberal a basis as that at the twin cities, the master added 25 per cent for "railway value, cost of acquisition and consequential damages."

In reviewing the findings, the court below reached the conclusion that "the master in effect found that the cost of reproduction and the present value of the lands for the terminals in the three great cities, including therein all cost of acquisition, consequential damages, and value for railroad use which he allowed, was only about 30 per cent more than the normal value of the lands in sales between private parties. He found the value of the lands outside the terminals to be only twice their normal value."

From our examination of the evidence we are unable to conclude that the excess stated may be thus limited. What is termed

the normal value does not satisfactorily appear. It further
211 will be observed—from the summary of valuations we have set forth in the margin—that the amount thus allowed in item 1 for lands, yards, and terminals, both in and out of the three cities ($21,024,562), was included in the total on which 4½ per cent was allowed in item 30 for "engineering, superintendence, legal expenses," and again was included in the total on which 5 per cent was allowed in item 37 for "contingencies," and, in addition, was included in the total on which 10 per cent was allowed in item 39 for "interest during construction." [P. 450.]

The fundamental objections to the application of the theory of reproduction to railway lands are thus stated by the court:

These are the results of the endeavor to apply the cost-of-reproduction method in determining the value of the right of way. It is at once apparent that, so far as the estimate rests upon a supposed compulsory feature of the acquisition, it can not be sustained. It is said that the company would be compelled to pay more than what is the normal market value of property in transactions between private parties; that it would lack the freedom they enjoy, and, in view of its needs, it would have to give a higher price. It is also said that this price would be in excess of the present market value of contiguous or similarly situated property. It might well be asked, who shall describe the conditions that would exist, or the exigencies of the hypothetical owners of the property, on the assumption that the railroad were removed? But, aside from this, it is impossible to assume, in making a judicial finding of what it would cost to acquire the property, that the company would be compelled to pay more than its fair market value. It is equipped with the governmental power of eminent domain. In view of its public purpose, it has been granted this privilege in order to prevent advantage being taken of its necessities. It would be free to stand upon its legal rights and it can not be supposed that they would be disregarded. [Pp. 450-451.]

The manner in which the "railway value" was found has been stated. It was based on a consideration of the market value in the usual acceptance of the word, to which was added what it was estimated it would cost the railroad to acquire the land, and the sum was multiplied by three, in the case of agricultural lands, so as to cover improvements which might be on the land and the consequential and severance damages, and the cost of acquisition. Then the court states the usual rules of damages upon condemnation of lands:

* * * supposing the railroad to be obliterated and the lands to be held by others, the owner of each parcel would be entitled to receive on its condemnation, its fair market value for all its available uses and purposes. * * * If, in the case of any such owner, his property had a peculiar value or special adaptation for railroad purposes, that would be an element to be considered. * * * But still the inquiry would be as to the fair market value of the property; as to what the owner had lost, and not what the taker had gained. * * * The owner would not be entitled to demand

payment of the amount which the property might be deemed worth to the company; or of an enhanced value by virtue of the purpose for which it was taken; or of an increase over its fair market value, by reason of any added value supposed to result from its combination with tracts acquired from others so as to make it a part of a continuous railroad right of way held in one ownership. * * * There is no evidence before us from which the amount which would properly be allowable in such condemnation proceedings can be ascertained. [Pp. 451-452.]

212 The court then points out what must be assumed in an attempt to estimate the cost of reproduction of lands:

Moreover, it is manifest that an attempt to estimate what would be the actual cost of acquiring the right-of-way, if the railroad were not there, is to indulge in mere speculation. The railroad has long been established; to it have been linked the activities of agriculture, industry and trade. Communities have long been dependent upon its service, and their growth and development have been conditioned upon the facilities it has provided. The uses of property in the communities which it serves are to a large degree determined by it. The values of property along its line largely depend upon its existence. It is an integral part of the communal life. The assumption of its nonexistence, and at the same time that the values that rest upon it remain unchanged, is impossible and can not be entertained. The conditions of ownership of the property and the amounts which would have to be paid in acquiring the right of way, supposing the railroad to be removed, are wholly beyond reach of any process of rational determination. The cost-of-reproduction method is of service in ascertaining the present value of the plant, when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon mere conjecture. [P. 452.]

The evidence in these cases demonstrates that the appraisements of the St. Paul and Minneapolis properties which were accepted by the master were in substance appraisals of what was considered to be the peculiar value of the railroad right-of-way. Efforts to express the results in the terms of a theory of cost of reproduction fail, as naturally they must, to alter or obscure the essential character of the work undertaken and performed. Presented with an impossible hypothesis, and endeavoring to conform to it, the appraisers—men of ability and experience—were manifestly seeking to give their best judgment as to what the railroad right-of-way was worth. And doubtless it was believed that it might cost even more to acquire the property, if one attempted to buy into the cities as they now exist and all the difficulties that might be imagined as incident to such a "reproduction" were considered. The railroad right-of-way was conceived to be a property *sui generis*, "a large body of land in a continuous ownership," representing one of the "highest uses" of property and possessing an exceptional value. The estimates before us, as approved by the master, with his increase of 25 per cent in the

case of the Duluth property, must be taken to be estimates of the "railway value" of the land; and whether or not this is conceived of as paid to other owners upon a hypothetical reacquisition of the property is not controlling when we come to the substantial question to be decided. [P. 453.]

What is "the substantial question to be decided"?

That question is whether, in determining the fair present value of the property of the railroad company as a basis of its charges to the public, it is entitled to a valuation of its right-of-way not only in excess of the amount invested in it, but also in excess of the market value of contiguous and similarly situated property. For the purpose of making rates, is its land devoted to the public use to be treated (irrespective of improvements) not only as increasing in value by reason of the activities and general prosperity of the community, but as constantly outstripping in this increase, all neighboring lands of like character, devoted to other uses? If rates laid by competent authority, state or national, are otherwise just and
213 reasonable, are they to be held to be unconstitutional and void because they do not permit a return upon an increment so calculated? [Pp. 453, 454.]

After a short examination of the nature of public service property the court answers its own query:

* * * And where the inquiry is as to the fair value of the property, in order to determine the reasonableness of the return allowed by the rate-making power, it is not admissible to attribue to the property owned by the carriers a speculative increment of value, over the amount invested in it and beyond the value of similar property owned by others, solely by reason of the fact that it is used in the public service. That would be to disregard the essential conditions of the public use, and to make the public use destructive of the public right.

The increase sought for "railway value" in these cases is an increment over all outlays of the carrier and over the values of similar land in the vicinity. It is an increment which cannot be referred to any known criterion, but must rest on a mere expression of judgment which finds no proper test or standard in the transactions of the business world. It is an increment which in the last analysis must rest on an estimate of the value of the railroad use as compared with other business uses; it involves an appreciation of the returns from rates (when rates themselves are in dispute) and a sweeping generalization embracing substantially all the activities of the community. For an allowance of this character there is no warrant.

Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, cannot properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right-of-way, yards, and terminals

upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of "engineering, superintendence, legal expenses," "contingencies," and "interest during construction."

By reason of the nature of the estimates, and the points to which the testimony was addressed, the amount of the fair value of the company's land cannot be satisfactorily determined from the evidence, but it sufficiently appears for the reasons we have stated that the amounts found were largely excessive. [Pp. 454-456.]

It is contended that the *Minnesota Rate Cases* decision is inapplicable here because what was condemned in that case was the particular method there employed to show the cost of reproduction of land, and not what is here suggested by the carrier's witnesses as possible. It is urged that in the *Minnesota Cases* the market value of the railroad lands was not shown. What was condemned
214 was the theory that the cost of reproducing the lands occupied by a railroad can be determined by a process of assuming a "railway value" estimated in multiples of the present fair average value of similar lands in the vicinity, and the condemnation of the court was upon the ground that impossible and contradictory assumptions must necessarily be the basis for the attempt to ascertain the present cost of a railroad's lands. We are unable to distinguish between what is suggested by the carrier in this record and nominally required by the act and what was condemned by the court as beyond the possibility of rational determination; nor is there any essential difference in the actual methods there employed and those now urged upon us. Before we can report figures as ascertained, we must have a reasonable foundation for our estimate, and when, as here, if the estimate can be made only upon inadmissible assumptions, and upon impossible hypotheses, such as those pointed out by the Supreme Court in the opinion quoted, our duty to abstain from reporting as an ascertained fact that which is incapable of rational ascertainment, is clear.

The decision in the *Minnesota Cases* has since been generally accepted by courts and commissions as settling the disputed question whether the cost of reproduction theory could be made to apply to lands of a railway. See *Louisville & N. R. Co.* v. *Railroad Commission*, 208 Fed., 35, 42; *Chicago & N. W. Ry Co.* v. *Smith*, 210 Fed., 632; *Ann Arbor R. Co.* v. *Fellows*, 236 Fed., 387.

In the *Denver Water Case* in the United States district court for the district of Colorado, to enjoin the enforcement of rates filed by authority of law, the special master reported, *inter alia*, the value of the utility's lands He said:

The measure of value of lands adopted in considering the evidence is the present normal market value of similar lands in the same locality. *Minnesota Rate Cases*, 230 U. S., 352, at 449-456. It follows from this rule that the original cost of the lands is not necessarily the controlling factor, though such original cost has been considered along with all the other evidence in determining the value. It likewise follows from this measure of value that when the present normal market value of similar lands in the same locality has been determined, nothing can be added to such value on account of the actual or estimated consequential or severance damages—if any—paid by the water company when it originally acquired its lands or on account of the company's actual or estimated overhead expenses in connection with the purchase of these lands. These expenses represent original costs of the lands and not their present market value. In considering the evidence concerning the value of these lands I have assumed that we may take into consideration their adaptability or availability for any useful purpose, provided the evidence shows that lands possessing such adaptability or availability have any special market value on account thereof; but the final question in my judgment, always is, what is the present market value of similar lands in the same locality and not what are these lands worth now to the water company for the purposes for which they are now used?

215 The utility excepted "because the master erred, as a matter of law, in refusing to consider, in determining the fair value of the lands, anything on account of the actual or estimated consequential or severance damages," and because he "erred in refusing to consider, in connection with the determination of the fair value of the lands, or to include therein, anything whatever on account of overhead expenses," claimed to be at least 10 per cent of the value of the lands for ordinary purposes. These exceptions were stricken by the district court. On appeal and cross appeal to the United States Supreme Court, that court treated as established the propriety of estimating the utility's property on the basis of present market values as to lands, and said that the method was fairly applied by the special master and was hardly disputed by the appellants, except as to certain matters other than his treatment of land. *Denver* v. *Denver Union Water Co.*, 246 U. S., 178.

The use of multiples in ascertaining the cost of reproduction of lands embraced in railroad rights of way was discontinued by the Washington and California commissions, reversing their former practice and their earlier decisions. *Public Service Comm.* v. *Seattle, Renton & S. R. Co.*, 4 Wash. Pub. Serv. Com. Ann. Rep. (1914), 132, 134; *In re Value of Quincy Western Ry. Co.*, 8 Cal. R. R. Com. Dec., 340. This interpretation of the *Minnesota Cases* has been accepted as to telephone rights of way by the Colorado and Washington Commissions. *Re Mountain States Teleph. & Teleg. Co.*, Colo. Pub. Util. Comm., P. U. R., 1917, B, 198, 265; *Public Service Comm.* v. *Pacific Teleph. & Teleg. Co.*, Wash. Pub. Serv. Comm., P. U. R., 1916, D, 947, 54 A. T. & T. Co. Com. L., 171, 174. Certain other

state commissions have never used multiples for the purpose of determining the cost of reproduction of lands. *Re Illinois Terminal Ry. Co.*, 4 Ill., P. U. Com. Rep. 263, 266; *Re Portland Ry. L. & P. Co.*, Oreg. Pub. Serv. Comm., P. U. R., 1916, D, 976, 1022.

Not alone do the uncertainties which we have referred to surround what would be the conditions of ownership, of improvement, and of value of near-by property, and of general industrial development, but there can be no certainty as to what land would have to be acquired at a cost to the carriers upon reproduction or a present acquisition. The carrier has been constructed within comparatively a recent period of time; nothing in the record shows us that the reproduction of the road would be regarded in any less friendly spirit by the community as a whole and individual owners in particular, than when the right of way and terminals in question were acquired but a few years back. As appears elsewhere in this report, of approximately 1,933.065 acres of carrier lands, 511.008 acres were acquired by the carrier through aids, gifts, grants of right of way, and donations.

216 Of the total original cost of the carrier lands, approximately 40 per cent was donated by citizens of various communities along the line. That all such donated lands would necessarily have to be bought or condemned and paid for at the full amount which a jury would award on condemnation is an assumption we do not feel warranted in making from the record before us. Because of the impossibility of making the self-contradictory assumptions which the theory requires when applied to the carrier's lands, we are unable to report the reproduction cost of such lands or its equivalent, the present cost of acquisition and damages, or of purchase in excess of present value. The present value of lands as found by us appears in the final valuation, appended hereto.

Controversies concerning the present value of lands of the carrier, as measured by the fair average of the normal market value of lands in the vicinity having a similar character, were composed with the result that figures contained in the tentative valuation are changed as follows:

Additions.

	Acres.	Present value.
Item No. 8, shown in carriers' summary statement No. 1, exclusive of subdivision (*b*)	5.825	$1,202.84
Item No. 9, shown in said summary	1.9575	7,825.95
Zone 51, Hunt county	1.92	1,728.00
Zone 6, Ellis county	(1)	828.00
Zone 7, Ellis county	(1)	878.90

The acreage and values now shown in the tentative valuation as lands in former streets, alleys, and highways used exclusively by the carrier, are transferred to and shown instead as lands owned and used for its purposes as a common carrier, and the 0.13 acre with

[1] Increase in unit of value; no change in area.

present value of $29.90, now shown as lands in former streets, alleys, and highways used exclusively by the carrier, is corrected to read 0.13 acre, present value $91.

Deductions.

	Acres.	Present value.
Zone 8, Ellis county (parcels 11 and 12)....	0.54	$540.00
Zone 33, Kaufman county (lot 4, block 19)	.23	287.50

Streets and Highways.

As used herein the word "street" covers streets and alleys within municipalities, and the word "highway" covers public roads outside of such municipalities.

As a practical working solution of the many and intricate problems presented by this subject, which would require, for exact
217 solution in each case, an expenditure of time, money, and effort out of all proportion to the amounts involved, we make the following rulings:

Where a street or an alley in a municipality has been vacated, that is, where the use of land as a street or an alley has been discontinued, and the carrier is using the land exclusively for common-carrier purposes, the original cost of the land to the carrier, if it can be ascertained, and its present value, measured by the market value of similar land in the vicinity, will be included in the inventory as land owned by the carrier, unless it affirmatively appears that the carrier does not own it.

Where a street or an alley in a municipality is used as such by the public, and is also used by the carrier for its common-carrier purposes, either along or across the same, no part of the land so jointly used will be included in the inventory as land owned by the carrier, unless it affirmatively appears that the carrier owns it.

Where a highway outside of a municipality is used as such by the public, and is also used by the carrier for its common-carrier purposes, either along or across the same, the land so jointly used, together with its original cost to the carrier, if that can be ascertained, and its present value, measured by the market value of similar land in the vicinity, will be included in the inventory as land owned by the carrier, unless it affirmatively appears that the carrier does not own it.

In the final valuation, the tentative valuation of the Texas Midland will be corrected to such extent as the application of these rulings may render necessary.

A right secured by a carrier under a municipal ordinance, or other similar authority, may be either a mere license revocable at any time by the public authority, or it may be a contract which confers upon the carrier the right to use the land for a definite period of time or in perpetuity, depending upon the power of and the language used by the public authority in making the ordinance, and also depending upon the circumstances under which the ordinance is made by such authority and accepted and acted upon by the carrier.

The principles of law involved are set forth and fully explained in the case of *Seaboard Air Line Ry. v. City of Raleigh*, 242 U. S., 15. In that case the railway company sought to enjoin the enforcement of an ordinance repealing a right to construct a track upon a sidewalk and use the track for common-carrier purposes. This right was conferred upon the predecessor in interest of said railway company in 1881, and the facts concerning it and the decision of the court were as follows:

* * * the railroad company asked permission of the city authorities to extend a track to and along the sidewalk on the
218 block in front of the compress, which was granted, the official record of the consent of the city having been manifested by the following entry in the minutes of the board of aldermen: "Upon application of John C. Winder, general superintendent, the Raleigh and Gaston Railroad Company was granted permission to occupy the sidewalk on the east side of Salisbury street, between Jones and Lane streets, for the purpose of running a track." In virtue of this consent a spur track projecting from the main tracks as they curved into the terminal block, was built which ran down to and upon the sidewalk in front of the compress. For many years this track was used for business going in and out of the compress, as well as for the general purposes of the railroad. In 1905, however, the compress ceased to be operated, and subsequently (about 1910 or 1911) the railroad company, owning the block on which the compress was situated, removed the same and built upon the block a warehouse. It was not possible, however, from the track on the sidewalk to directly reach such warehouse, as along the block where it fronted on Salisbury street tracks were laid between the warehouse and the spur track which for the purposes of the railroad were depressed below the level of the street and sidewalks, and thus the spur track on the sidewalk was only available for parking cars or as a team track and was alternately in use for one or the other of these purposes when the city adopted the assailed ordinance directing the removal of the spur track.

Under this statement it becomes at once apparent that the court below rightly decided that the contract right asserted had no existence since on the very face of the consent which was given a mere right to occupy was conveyed without any contract as to time and which therefore, taking the best view for the railroad, amounted to conferring upon it a mere license to put and use a track upon the sidewalk and therefore subject to the power of the city to revoke whenever it deemed the municipal interest required it to do so.

But the contention is that although it be conceded that the well-settled rule is that general implications may not be resorted to for the purpose of converting a grant of a municipality which is upon its face a mere license into a contract for a stated period or in perpetuity, nevertheless that rule is subject to a well-defined limitation or exception which as presented in the argument in various forms may be stated as follows: That where general powers are conferred and duties are imposed upon a corporation which from their nature and essential character presuppose the right to exert them or the

duty to perform them during a specified time or in perpetuity, and a particular power or right is conferred on the corporation which has a necessary relation thereto or an essential connection therewith, although such particular power or right may not have expressly taken the form of contract or grant for a stated time or in perpetuity, nevertheless such result may be implied by considering the essential relation which the particular power or right granted bears to the general powers and duties possessed and the necessary connection between the two for the purpose of giving a common duration to both. * * *

But while the general rule is well founded and the exception or limitation by which it is asserted to be qualified is well settled, it has no relation to the case in hand, since the particular action of the city in question concerned a mere permission to exercise a facility as a license given long after the creation of the railway corporation and not inherently or in any degree necessarily controlling its power to discharge its corporate attributes. Indeed so much is this the case on the face of the situation here presented that it becomes apparent that to apply the limitation to a case like this would destroy the general rule itself.

219 The contention that even though this be the case, inasmuch as the railroad had for a long time operated the spur track on the sidewalk and used it for its general railroad purposes with the assumed knowledge and assent of the city, thereby the existence of a contractual and permanent right must be inferred, is manifestly without merit. Indeed it amounts to saying that possession under a mere license was capable of causing that which was revocable and precarious to become contractural and permanent. [Id., pp. 17-20.]

In view of the above ruling of the Supreme Court we think it is obvious that many of the ordinances under which carriers are using streets and highways are mere licenses, and may be revoked at the pleasure of public authorities having jurisdiction in the premises without the payment of any damages to the carriers.

It is also apparent that the value to the carrier of the right to use land included in streets and highways is the same, regardless of whether the carrier has paid for the land or for the right to use it. And a similar statement may be made concerning the value to the general public of the services performed by the carrier in connection with the use of such land. See also *Manufacturers' Railway Co. v. U. S.*, 246 U. S., 457.

The right exercised by a carrier by virtue of a municipal ordinance or other similar authority to use a street or an alley jointly with the general public is similar in character to the privilege conferred upon a corporation operating a street railway and does not give the carrier an interest in land which may be measured by the value of land adjoining the street. The area of a street can not be considered simply as land and its value can not be measured in dollars. The laying out of a street transfers to adjoining lands the value of the land taken and included in the street.

In our opinion this right of a carrier is in the nature of a fran-

chise and must, for valuation purposes, be treated the same as other franchises are treated and, as above stated, this is the theory upon which we have proceeded in valuing the lands of the carrier.

The two items of 24 acres and 16 acres in zone 12 in Delta County with an aggregate present value of $2,640, now shown as noncarrier lands in the tentative valuation, are transferred to and shown instead as common-carrier lands owned.

Appreciation.

Carriers have introduced considerable testimony to show that an old roadbed is of more value than a new one and have urged that this value should be stated in some form in the report of the Commission.

As to the fact, no serious question can be made. While most items of property entering into the construction of a railroad de-
220 preciate from the first, the cut and embankment appreciate. The soft sides assume a natural slope, the earth becomes solidified and less susceptible to the action of the elements, vegetation frequently springs up which serves to hold in place the soil. The soft spots which at first develop in the embankment disappear. The texture of the embankment and the bottom of the cut become firmer owing to the gradual settling together of the earth and the pounding of the trains.

All this tends to improve the quality of this part of the railroad. It is generally understood that in some respects the cost of maintaining the old railroad is less than the new and that trains can be operated over it with greater safety and economy. The real difficulty is to express in dollars or otherwise the extent of this appreciation and to determine just what report upon this item can be made to Congress.

The act nowhere refers to appreciation. It does require, as already noted, a statement of depreciation. Appreciation is the antithesis of depreciation, and it would be natural to show the two in the same connection, but depreciation is stated with reference to the life of an article while appreciation can not be so estimated.

The act requires the Commission to report upon other values and elements of value, and it is possible that the value of appreciation might properly be stated under this head, although it is generally understood that other values are intended to include the intangibles.

Without inquiring just what words in the act require a statement of appreciation, it is apparent that it was the intent of Congress to require a statement of all those costs, values, and other circumstances which might bear upon the value of the property, for rate-making purposes at least, and possibly for other purposes. Appreciation is a fact which may affect the final value of the property. Without attempting to indicate what its influence should be, or whether it should have any influence, it should if possible be dealt with in our report. Is it possible to ascertain and assign a value to this item? The carriers say that this can be done and have suggested a method for doing it.

Certain items of expense in the maintenance of a railroad are greater when new than when old. The side of the new cut washes down into the ditches along the track, which must therefore be frequently cleaned out. As time goes on the slope of the cut becomes somewhat changed and vegetable growth appears which tends to hold the sides in place. Under these influences the ditches require less attention.

The same thing is true of the embankment. When this is soft it readily washes away and the holes thus made must be filled
221 up. Soft spots will develop both in embankment and in cut but especially in the embankment, which must be filled up and brought back to grade. This part of maintenance is more costly in the early days of operation than in later years.

Upon the other hand, certain items of maintenance are less at first. One of the large expenses of operation is the renewal of ties, which is inconsiderable during the first years. Rails need not be renewed for several years and often for many years. Ballast only begins to wear out after a considerable period of use. These items of maintenance are less at first. The net result seems to be that the total cost of maintenance during the early years is less than afterwards.

Carriers have undertaken to separate those items which are greater in the early years from those which are less and to determine the amount of those items year by year for the first five years of operation, contrasting them with the next five years. In this way a conclusion is reached that the average cost of maintaining a new road is so many dollars a year more per mile than for an old road. Sometimes it is assumed in these computations that appreciation would have been completed at the end of 5 years, in others that 10 years would be required for this purpose, while one or two witnesses were of the opinion that the process continued indefinitely.

Having determined the greater cost of maintaining the roadbed while appreciation is accruing, the value of appreciation is determined as follows: If it costs $100 a mile per year less to maintain the roadbed after it has become solidified and adapted than before, then the added value of the appreciated over the new road is represented by the capitalization of this $100. Since this road can be maintained for $100 a mile less, the net income from the use of the road is $100 per mile more per year and the purchaser buying it could afford to pay $2,000 per mile more for the same, assuming that money in that form of investment were worth 5 per cent.

We have carefully examined the figures given by the carriers and have reached the conclusion that they do not warrant any definite finding. They may tend to show that the cost of maintenance with respect to the items enumerated are slightly more in the early days of the property than after the roadbed has become compacted and solidified, although if the figures given were the only evidence of this the conclusion would be extremely doubtful. To what extent, is the question and the figures of the carriers afford no answer to this. Any finding based on the testimony in this record would be only a guess.

It may also be noted that even if it were possible to state this added cost of maintenance, we should hesitate to give to it
222 the application claimed for it by the carrier. If it has cost a carrier $500 a mile to secure this appreciation, that may be a reason for adding that much to the present value of the property, but the carrier claims that if this $500 per mile is the average excess in maintenance for five years, the added value would be $2,000 a mile and not $500.

Appreciation is not due to any addition to the property. All the carrier has done is to maintain the property. It has cleaned out the ditches, it has filled up the holes in the embankment, it has simply kept good the form and substance of the structure itself. The improvement is due to a natural process which takes place with the lapse of time and which is not the product of any effort or expenditure of the carrier.

If the cut under this process has grown larger, it is measured and the carrier is given credit for the size as it is found to-day. If an improvement like a retaining wall has been added, that is a betterment for which the carrier is credited. Whatever is there when the property is inventoried is embraced in the inventory.

The attempt to measure the value of appreciation by its cost is not consonant with our prescribed rules of accounting, under which the expenses of operation are chargeable to operation. There is no part of this expense which the carrier has carried or could properly carry into its investment account. If the public has once paid for this added expense, which is inherent in the early years of operation, should it be constantly taxed on account of these same expenses in the way of added rates?

Our conclusion upon the whole subject, therefore, is that no separate value can be placed upon appreciation. When it definitely appears that it exists it must be taken into account in determining the value of the property. The influence which appreciation should have upon value may depend upon the previous history of the property. All this depends upon the purpose for which the value is being stated and the manner in which that value is to be determined.

The Texas Midland claims we should include not less than $61,000 for appreciation. The tentative valuation did not include this item. This claim is not supported by the record, and it follows the tentative report must be approved in this respect.

Other Values and Elements of Value.

The act requires that "the Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such carrier, * * *

In the tentative valuation under consideration we have stated that "no other values or elements of value were found to exist."
223 The carrier asserts that since no figure has been reported under this heading, the act has not been complied with.

Before the tentative valuation was served, the carrier was requested to file a statement of the items, if any, upon which an allowance under this heading was claimed. In response thereto claim was made on account of (1) going-concern value; (2) connection with other lines; (3) good station facilities; and (4) gradients.

At the hearing counsel for the carrier stated that he did not understand that the carrier would be expected to put in testimony with respect to its claim under this heading. The director of the bureau stated at that time that the Commission would be glad to listen to any testimony the carrier might care to offer. Notwithstanding this invitation, no testimony has been offered in this case with respect to the items under consideration.

We have diligently searched for and inventoried the property of the carrier and have reported everything we have found in the tentative valuation already served. The carrier has asserted that there are other values and elements of value in connection with its property, but although repeatedly asked to do so has failed to name a figure which it believes should be found by us. That it is unable to do so is shown by the following excerpt from the argument in this proceeding:

The Chairman: From the record as you understand it, what would be your claim on behalf of your clients, as to the nature and the amount, particularly as to other values and elements of value?

Mr. Butler: A sufficient sum—which added to the amount your honors would attribute to the physical property would make the total value of the property not less than its cost of reproduction new.

The Chairman: If this Commission has the power to value the property, and if the value placed thereon were the cost of reproduction new, that would meet in full the claims of your clients?

Mr. Butler: As a final value?

The Chairman: Yes.

Mr. Butler: I would still insist upon the Commission's telling us how they got at other values and elements of value. I don't know how to do it very well. We will try to help on that as much as we can. But so far as concerns the Texas Midland, I can not outline a proper basis for stating the ascertainment of other values and elements of value.

In this connection it should be stated that in the instant case going-concern value has been given consideration in the cost of reproduction new and cost of reproduction less depreciation figures. In the cost of reproduction new and cost of reproduction less depreciation figures the values assigned to the property are not those of a dead plant but of a going concern, and to the extent indicated in the *Des Moines Gas Case* cited below, this element has been covered in the figures. Going-concern value has been described
224 as the value of an assembled and established plant doing business over one not thus advanced. In making up the inventory we apply prices to the different parts of the property in the

light of the fact that it is a railroad and doing business; otherwis the prices which would be applied would be scrap prices. Tha going value is recognized in an inventory of this kind is establishe by the following quotation from the decision of the Supreme Cou in *Des Moines Gas Co.* v. *Des Moines, supra:*

What is called in this summary "the present value of physica property," the report shows was arrived at by the master in th manner following: He first found what he thought was the bas value of the property, i. e., "what it would cost to produce it at th present time new, without adding thereto any overhead charges. This figure he fixed at $1,975,026. To this he added overhea charges, 15 per cent—$296,254. From this he deducted depreci tion, $333,878, leaving as the value of the property thus ascertained $1,937,402. [Id., pp. 161-162.]

* * * That there is an element of value in an assembled an established plant, doing business and earning money, over one no thus advanced, is self-evident. This element of value is a propert right, and should be considered in determining the value of th property, upon which the owner has a right to make a fair retu when the same is privately owned although dedicated to public us Each case must be controlled by its own circumstances, and th actual question here is: In view of the facts found, and the metho of valuation used by him, did the master sufficiently include th element in determining the value of the property of this compan for rate-making purposes. [Id., p. 165.]

As pointed out in the *Cedar Rapids Case*, if return is to be r garded beyond that compensation which a public service corpor tion is entitled to earn upon the fair value of its property, the rig to regulate is of no moment, and income to which the corporatio is not entitled would become the basis of valuation in determinin the rights of the public. When, as here, a long established and su cessful plant of this character is valued for rate-making purpos and the value of the property fixed as the master certifies upon t basis of a plant in successful operation, and overhead charges ha been allowed for the items and in the sums already stated, it ca not be said, in view of the facts in this case, that the element going value has not been given the consideration it deserves and t appellant's contention in this behalf is not sustained. [Id., p. 17

The ruling in the *Des Moines Gas Case* concerning going val was followed by the Supreme Court in *Denver* v. *Denver Water C supra*, in which the court said: "The master expressly declared th his detailed valuation of the physical property and water rights i cluded no increment because the property constituted an assembl and established plant, doing business and earning money." A se rate allowance for going value was included in the valuation of t water company's property, while no such separate allowance w made in the *Des Moines Gas Case.*

In the above sense the term "going value" is capable of concrete conception and definite ascertainment. However, there has
225 been urged upon us a going value which is said to exist in addition to that here referred to, which apparently runs into sums of great magnitude, but which, in spite of its magnitude, is incapable of more than the most metaphysical and conjectural description on the part of those who advocate its inclusion as an element of value. It has been urged upon us on many successive occasions, but from the beginning it has been nothing but a vague claim. However, the owners of the Texas Midland have not received a fair return on their investment in this property. The operation of the road, as shown in Exhibit C and other data in Appendix 2 hereto, has resulted in frequent deficits. These deficits are not elements of value, but they are pertinent facts to be given consideration in a proper proceeding.

The requirements of the act in this regard have been fully complied with.

Aids, Gifts, Grants, and Donations.

Although the issue is not raised by any protest, upon the hearing the Railroad Commission of Texas asserted that the state of Texas had issued to the predecessor corporation of the Texas Midland certificates aggregating 1,800,000 acres of land of the public domain of that state, for the purpose of assisting the predecessor corporation in the building of this railroad. It was claimed that of those certificates a total of 1,471,000 acres were actually located and received by the predecessor corporation from the state and sold, and the proceeds have found their way into the treasury of the predecessor corporation. Assertion is made that the Texas Central Railway Company at that time owned a total of approximately 230 miles of track, of which approximately 52 miles was acquired by the Texas Midland in 1892.

Nothing in the record, or developed in our investigations, tends to show that any of the lands located by the Texas Central Railway Company were granted by the state of Texas on account of the 52 miles of the Northeastern branch acquired by the Texas Midland. The suggestion of a defect in the tentative valuation in this regard can not be taken as well grounded.

Commissioner Aitchison, having been of counsel, did not participate in the disposition of this case.

226 *Order.*

At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 31st Day of July, A. D. 1918.

Valuation Docket No. 2.

Texas Midland Railroad.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report containing its conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That, subject to the reservation hereinafter made, the following be, and it is hereby declared to be, the final valuation of Texas Midland Railroad as of June 30, 1914:

Final Valuation, Texas Midland Railroad.

Location and general description of property.—The railroad of the Texas Midland Railroad, hereinafter referred to as the carrier, is located entirely within the state of Texas. Its main line extends from Ennis to Greenville, a distance of 72.92 miles, and from Commerce to Paris, a distance of 37.629 miles, making a total main-line mileage of 110.549 miles. The carrier has no branch lines. The tracks of the St. Louis Southwestern Railway Company of Texas, between Greenville and Commerce, a distance of 13.97 miles, are used under a trackage arrangement to unite the two pieces of the Texas Midland Railroad above mentioned, and thereby establish a through operating line from Ennis to Paris, a distance of 124.519 miles. The carrier also has yards and sidetracks aggregating 37.302 miles. Its railroad embraces 147.851 miles of all tracks.

In Appendix 1 will be found a general description of the characteristics of the property of the carrier.

Jointly used property.—In Appendix 2 will be found a statement of the tracks and facilities leased from other companies.

The carrier owns and uses jointly with other common carriers railroad tracks as follows:

227 One thousand one hundred and twenty linear feet of railroad at North Ennis, jointly owned by the carrier and the Houston & Texas Central Railroad, one-half each, and jointly used by such companies.

A connecting track, 962 linear feet in length, at Kaufman, Tex., jointly owned by the carrier and the Texas & New Orleans Railroad one-half each, and jointly used by such companies.

Five tracks at Greenville, Tex., aggregating 2,617 linear feet, jointly owned by the carrier and the St. Louis Southwestern Railway Company of Texas, and the Missouri, Kansas & Texas Railway

Company of Texas, one-third each, and jointly used by such companies.

Five sidetracks at Greenville, Tex., aggregating 5,760 linear feet, jointly owned by the carrier and the St. Louis Southwestern Railway Company of Texas, one-half each, and jointly used by such companies.

Traffic connections.—The railroad of the carrier connects with the Houston & Texas Central Railroad, at Ennis; the Texas & New Orleans Railroad, at Kaufman; Texas & Pacific Railway, at Terrell; the Missouri, Kansas & Texas Railway of Texas, and St. Louis Southwestern Railway Company of Texas, at Greenville; the St. Louis Southwestern Railway Company of Texas, at Commerce; and the St. Louis & San Francisco Railway Company, Paris & Mount Pleasant Railroad, Gulf, Colorado & Santa Fe Railway Company, and Texas & Pacific Railway, at Paris.

Physical conditions affecting construction.—In Appendix 1 appear statements as to the topography, geology, and climate as affecting the construction of the carrier's railroad.

Economic conditions relating to traffic.—The connections of the carrier's railroad with the lines of other common carriers have been stated. This road runs through a fertile agricultural country and has upon its lines several towns of considerable size. No mines and but little manufacturing are tributary to it.

In Appendix 1 is stated the percentage of the principal classes of freight carried over this railroad, and a comparison of the density of traffic of the carrier's railroad for the year 1914 with the density of traffic of all other railroads in Texas.

Corporate history.—The Texas Midland Railroad is owned and operated by a corporation also styled the Texas Midland Railroad, which was incorporated under the laws of Texas December 16, 1892, and has its principal office at Terrell in that state. The Texas Central Railroad Company had constructed, soon after its incorporation in 1879, a line of railroad extending from Garrett in a northerly direction through Midland Junction to Roberts, a distance of about
52 miles. This road was not connected with the main line
228 of the Texas Central, was known as the Northeastern branch, and will be designated in this report as the branch.

In 1891 the Texas Central Railway, including the branch, was sold under foreclosure proceedings to a committee acting for the bondholders. Mrs. Hetty R. Green owned 750 of these bonds and she subsequently made an arrangement by which the branch was transferred to her in lieu of her interest in the entire property and for other considerations. This arrangement by which she acquired the title to the branch was concluded in January, 1893, and soon afterwards the property was turned over to the Texas Midland Railroad, which had previously been organized for that purpose.

Soon after acquiring the branch the Texas Midland Railroad began the improvement of that piece of road and the construction of other pieces of road, all of which finally resulted in the present railway. The property assumed its present form about October 1, 1896, except that during the fiscal year ending June 30, 1908, the

Texas Midland Railroad abandoned that portion of its line extending from Garrett to Midland Junction, 1.93 miles in length.

In Appendix 2 will be found a more detailed statement of the corporate history of which the foregoing are the salient facts.

History of corporate financing, capital stock, and long-term debt.—As a part of the transaction by which the Texas Midland Railroad acquired the branch the following stocks and bonds of that company were issued:

May 23, 1893, capital stock, par value	$500,000
July 27, 1893, first mortgage 5 per cent betterment bonds, par value	150,000
July 27, 1893, second mortgage 5 per cent purchase money bonds, par value	750,000
Total	1,400,000

As a part of the same transaction Mrs. Green conveyed to the Texas Midland Railroad the branch and paid to it $75,000 in cash.

As already noted the Texas Midland Railroad soon after it acquired the branch proceeded to construct the remainder of its present railroad. The money for this purpose was furnished by Mrs. Green acting under the name, as to most transactions, of the Texas Midland Construction Company. In this way previous to August, 1908, she had advanced approximately $1,746,931.33.

In August, 1908, the capitalization of the Texas Midland Railroad was recast by canceling 3,880 of the 5,000 shares of capital stock and by retiring all of the $900,000 of bonds which had previously been issued. A new mortgage bearing interest first at the rate of 4½ per cent, but subsequently at the rate of 4 per cent to the amount of $2,000,000 was issued. This left the capitalization of that company as follows:

229	Capital stock, par value	$112,000
	Mortgage indebtedness, 4 per cent	2,000,000
	Total	2,112,000

The foregoing has ever since continued to be and now is the capitalization of the company.

At the time of the readjustment of the capitalization as above there was canceled of the indebtedness of the Texas Midland Construction Company all but $500,000, which has never been paid and which constitutes a deferred liability of that amount and is really a part of the capitalization of the company.

Further details as to the matters embraced under this heading appear in Appendix 2.

Net and gross earnings of the carrier.—The results of the corporate operations of the carrier from February 26, 1893, when it opened its books and began to transact business, to and including June 30, 1914, are stated in detail in Appendix 2. These results are summarized as follows:

Gross earnings	$9,939,298.80
Operating expenses	8,539,431.88
Leaving net earnings	1,399,866.92
During the same period taxes assessed against the Texas Midland aggregated	274,367.20
Leaving a net income of	1,125,499.72
To this should be added income from nonoperating sources of	1,504.22
Making gross income for the period	1,127,003.94
During this period the Texas Midland paid rents and balance for hire of equipment	353,936.95
Leaving for the payment of interest and dividends during this period	773,066.99

General balance sheet.—The general balance sheet of the carrier, showing the result of its corporate operations to June 30, 1914, is as follows:

Assets.

Investments:		
Investment in road and equipment		$2,748,171.46
Current assets:		
Cash	$13,908.16	
Net balance receivable from agents and conductors	4,324.03	
Miscellaneous accounts receivable	16,395.34	
Materials and supplies	82,943.24	
Total current assets		117,570.77
230 Unadjusted debits:		
Preliminary survey, Greenville Commerce line	$444.25	
Freight claim account	2,800.29	
Paid claims unadjusted	9,668.98	
Total unadjusted debits		$12,913.52
Total assets		2,878,655.75

Liabilities.

Stock:		
Capital stock		$112,000.00
Long term debt:		
Funded debt unmatured		2,000,000.00
Current liabilities:		
Loans and bills payable	$20,000.00	
Traffic and car service balances payable	18,526.69	
Audited accounts and wages payable—		
Accounts payable	$55,742.07	
Pay check account	25,231.03	
	80,973.10	
Agents' drafts	1,584.13	
Interest matured unpaid	300,000.00	
Unmatured interest accrued	33,333.30	
Total current liabilities		454,417.22
Deferred liabilities:		
Hospital fund	682.97	
Due Texas Midland Construction Company	500,000.00	
Total deferred liabilities		500,682.97
Unadjusted credits:		
Accrued depreciation equipment	105,168.91	
Other unadjusted credits	38,849.06	
Total unadjusted credits		144,017.97
Corporate surplus:		
Profit and loss (deficit)		332,462.41
Total liabilities		2,878,655.75

Investment in road and equipment.—The details of the maximum amount of investment in road and equipment of the carrier, which includes noncarrier property, as stated in the records of the carrier at June 30, 1914, amounte dto $2,748,171.46. As appears in Appendix 2, certain adjustments have been made, as a result of which the maximum of the investment account has been restated at $2,892,360.94, for road and equipment, including land.

Original cost to date.—The original cost to date of each piece of property could not be found with precision. From an examination

of the books of the carrier it appears that $2,892,360.94
231 somewhat exceeds the amount of money which could have been expended in the property. A statement of the manner in which this amount was arrived at, classified in conformity with the classification of expenditures for road and equipment, is included in the accounting report which is a part hereof and is attached hereto as Appendix 2.

The original cost of equipment in existence on valuation date was $522,874.59; of carrier lands, $67,493.44. Of this latter amount $22,884.69 was expended by the carrier, while the balance, $44,608.75, was expended by various donors.

Cost of reproduction new, and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of property other than land wholly and partly owned and used by the carrier is $3,461,356 and $2,597,442, respectively. It is divided as follows:

Common-carrier Property.

	Cost of reproduction new.	Cost of reproduction less depreciation.
Wholly owned and used	$3,437,327	$2,577,389
Jointly owned and used:		
With Missouri, Kansas & Texas Railway Co. of Texas and St. Louis Southwestern Railway Co. of Texas—one-third each; Texas Midland's portion	1,822	1,272
With St. Louis Southwestern Railway Co. of Texas—one-half each; Texas Midland's portion	19,271	16,949
With Houston & Texas Central Railroad—one-half each; Texas Midland's portion	1,091	849
With Texas & New Orleans Railroad—one-half each; Texas Midland's portion	1,395	983
Total	3,461,356	2,597,442

These amounts classified in conformity with the classification of expenditures for road and equipment as prescribed by us are shown in the summary sheets which are a part of this report as Appendix 1.

Cost of lands, rights of way, and terminals at the time of their dedication to public use and present value of the same.—The cost of carrier lands, as accurately as it could be determined from the records, was found to be $67,493.44, and the present value of the same $254,034.99, divided as follows:

	Acres.	Original cost.	Present value.
Carrier lands purchased...	1,422,057	$22,884.69	$180,715.75
Carrier lands donated	511,008	44,608.75	73,764.23
Total	1,933,065	67,493.44	254,479.98

The figure $22,884.69, shown as the original cost of carrier lands purchased, represent actual expenditures as disclosed by the
232 books of the companies. Our accountants were unable to locate all of the records of the company which contributed that part of the line from Ennis to Greenville.

Present cost of condemnation or purchase of lands.—Following the views previously expressed, no attempt is made to state what would be the present cost of acquiring, either by purchase or by condemnation, the lands of the carrier devoted to the public use.

Property held for purposes other than those of a common carrier.—The carrier owns 35.96 acres of land which are not devoted to transportation purposes. The original cost and present value of this land, respectively, is divided as follows:

	Acres.	Original cost.	Present value.
Noncarrier lands purchased.....	2.42	$5,410.00	$8,269.85
Noncarrier lands donated.....	33.54	3,165.00	5,105.40
Total	35.96	8,575.00	13,375.25

Aids, gifts, grants of right of way, and donations.—The right of way of the carrier was largely donated by citizens of Ennis, Greenville, Cooper, Commerce, and Paris, these being the principal towns which the road serves. For the most part these lands were purchased with money contributed by the citizens, the lands themselves being deeded to the railroad. Certain sums of money and other contributions, in effect aids and donations, were received by the carrier. These amounted to $1,058,018.30, made up as follows:

Right-of-way lands	$44,608.75
Nontransportation lands	3,165.00
Cash by citizens of five communities.....	19,981.46
Advances by individuals and companies on account of industrial tracks which are included in the reproduction cost of this property.....	1,130.30
Interest due bondholders canceled.....	121,249.96
Money advances by Texas Midland Construction Company apparently canceled.....	778,219.71
Equipment donated by Texas Midland Construction Company	88,681.17
Expenses, E. H. R. Green to St. Louis, chargeable against rails	250.00
Freight charges on coal, donated by Mrs. Green, chargeable against ballast	731.95
Total	1,058,018.30

In addition to this, it should be noted that no interest was reckoned upon the advances of the Texas Midland Construction Company, and that since the settlement with that company in 1908, at which time these advances were reduced to $500,000, no in-
233 terest has been reckoned or paid upon that account. The accounting report in Appendix 2 explains these figures in detail.

The Texas Midland Railroad also occupies 16.42 acres of streets and alleys which have been vacated by municipal or other ordinances and the exclusive use given to it, the present value of which is $10,403.40. This sum is included in the present value of lands, above stated.

Material and supplies.—As shown in the general balance sheet, the value of the material and supplies on hand is shown by the carrier's records to have been, upon valuation date, $82,943.24. As adjusted by inventory of the materials and supplies on hand, this sum is increased to $96,857.19. The difference between these sums has not been explained, and has not been taken into the carrier's records.

Other values and elements of value.—No other values or elements of value were found to exist.

Appendices.—Appended hereto as Appendix 1 are the summary sheets and explanatory text showing the classification of the cost of reproduction new and cost of reproduction less depreciation above set forth, in conformity with the classification of expenditures for road and equipment, exclusive of lands. Appendix 2 states the details as to the corporate and financial history, original cost to date, investment, capitalization, net and gross earnings, and expenditures of money and purposes for which expended, of the carrier. Appendix 3 is a statement of the methods employed, and of the reasons for the differences between the various cost values reported.

The engineering, land, and accounting reports give the details respecting these figures and are on file in the bureau of valuation of the Commission, open to public inspection, and subject to the direction of Congress, and such reports are referred to for greater particularity as to the matters herein stated.

This order will be supplemented by such further findings and order with respect to the value of the carrier property as may be deemed appropriate.

By the Commission.

[SEAL.] GEORGE B. McGINTY,
Secretary.

234 APPENDIX 1.

Explanatory Text.

Topography, geology, and climate.—The country traversed by the Texas Midland Railroad consists of rolling hills, interspersed with small depressions, no streams of any consequence being encountered except north of Ennis, where the Trinity River is crossed, and south of Greenville, where the Caddo River is crossed. The soil on the hills

is a sandy loam, while in the bottoms, a black waxy material is encountered, which by some people is called "gumbo." There are no outcroppings of rock and very little rock or hard material was encountered in the construction of the roadbed. The average altitude of the territory traversed by the Texas Midland is 5 0 feet above sea level. The winters are mild, snowfall being light, and the period of low temperature is of brief duration. The average rainfall distributed throughout the year is 39 inches.

Density of traffic.—The following table with reference to freight traffic, is a statement of the percentage on the principal classes of freight carried by this road:

Year.	Grain.	Cotton.	Total products of agriculture.	Lumber.	Cement, brick, lime.	Bituminous coal.	All other classes.	Total.
1911.....	2.47	9.33	27.69	6.39	3.51	31.51	19.10	100
1912.....	6.34	15.98	40.26	5.87	3.08	26.22	4.25	100
1913.....	3.37	11.89	32.22	6.19	2.95	35.87	7.51	100

The density of traffic on the Texas Midland Railroad for the year 1914, compared with the density of traffic of all other railways in Texas, is shown in the following table:

Items.	Texas Midland Railroad.	All other railroads in Texas.
Number of revenue tons hauled 1 mile, per mile of road	161,008	199,777
Number of revenue passengers hauled 1 mile, per mile of road	66,900	33,818

Valuation Sections.—The Texas Midland Railroad property consists of the following main and other track mileage, with their
235 appurtenances, as given below in the general description of valuation sections:

Valuation section No. 1.—From survey station 0+00, being a rail monument 280 feet north of head block in the Houston & Texas Central Railroad's main track, south end of the yards at Ennis, Tex., to survey station 3,855+21, being 1,070 feet north of the center of the St. Louis Southwestern Railway of Texas' crossing at Greenville, being 72.920 miles of main line.

Valuation section No. 2.—1,120.9 linear feet of the north leg of the Y at North Ennis, of the Texas Midland Railroad and the Houston & Texas Central Railroad, its easterly end being 82 feet southwesterly from head block in the Texas Midland's main track at North Ennis. This track is jointly owned by the above-named companies, and each has a 50 per cent interest.

Valuation section No. 3.—The connecting track between the Texas Midland and the Texas & New Orleans Railroad, being 962 feet in length, located at Kaufman, Tex., commencing at the head block 1,486.3 feet north of the center of the railroad crossing of the above

railroads. This track is jointly owned by the above-named railroads, and each has a 50 per cent interest.

Valuation section No. 4.—Five tracks at the Refining Company's plant at Greenville, Tex., which are jointly owned by the St. Louis Southwestern Railway Company of Texas, the Missouri, Kansas & Texas Railway Company of Texas, and the Texas Midland Railroad, each company owning one-third undivided interest. The total length of the tracks is 2,617 feet.

Valuation section No. 5.—Five sidetracks in Jordan Street, Greenville, Tex., and leading thereto, in which the St. Louis Southwestern Railway Company of Texas and the Texas Midland Railroad each own a one-half undivided interest. The total length of these tracks is 5,760 feet.

Valuation section No. 6.—Commences at survey station 3,877+22.5, being the head block in the St. Louis Southwestern Railway Company of Texas main track, 777.5 feet southwest of the center of the St. Louis Southwestern Railway of Texas and the Texas Midland Railroad crossing at Commerce, Tex., and extending to survey station 5,864+05.0 of the main track, 227 feet north of the south face of the freight depot at Paris, being 37.629 miles in length.

Unit prices.—The unit prices applied to the schedules of reproduction on the Texas Midland are the representative prices of railway property constructed or purchased by the usual methods of railway construction. For that class of property which is generally constructed under contract, the unit prices are representative of unit costs. Where property is first purchased direct from the manufacturer, or material is purchased from the manufacturer and installed by day labor, the unit prices are representative of unit costs.

In all instances as specified by the classification of accounts of the Interstate Commerce Commission, the unit prices represent the total cost of the item of property in place, which is for all expense incident thereto, including such profits as representative unit costs may contain.

236 Statement by Accounts, Giving Analysis of Unit Prices and Principles and Methods Follow

Account No. 1, engineering.—It was assumed that the cost of this account would be an amount equal to 2¼ per cent of Accounts Nos. 3 to 47, inclusive.

Account No. 3, grading.—The quantities of clearing and grubbing are estimated according to the extent of timber contiguous to the right of way as of the date of valuation.

The unit prices shown in the schedules of cost of reproduction are representative contract prices for work of this kind in the vicinity of northern Texas.

The grading quantities shown are the actual quantities measured in the field, plus an amount for shrinkage which is added to the embankment quantities. This additional amount is shown separately in the schedules of reproduction.

Clearing and grubbing, excavation and embankment quantities in the roadbed were given a service condition of 100 per cent.

Account No. 6, bridges, trestles, and culverts.—A bill of material of all trestles is shown for each valuation section, accompanied by a statement of their aggregate length.

The service condition for each individual trestle was established for the deck and for the substructure separately. Subsequently the service condition per cents for all trestles on a valuation section were compiled and a weighted average obtained.

The unit prices for pipe and box culverts are for all labor of installation, including excavation for foundation.

Account No. 8, ties.—The percentages of first-class and second-class ties were determined from the carrier's tie records.

The unit prices applied to cattle-guard, bridge, and switch ties are stated in amounts per 1,000 feet board measure, unloaded in company's material yard.

The service condition of ties was determined from statistical studies of the carrier's records, and the conclusion reached that the renewals had been normal, thus giving the ties a service condition of 50 per cent.

Account No. 9, rails.—The unit prices applied to new rails are upon the basis of 5 per cent being second class and 95 per cent being first class.

A study of the rail of the Texas Midland Railroad led to the conclusion that any rail in main-line track could be expected to have a total life of 40 years as new rail before becoming relay; that new rail laid in side tracks could be expected to have a life of 100
237 years before becoming scrap; and that relay rail would have a life of 60 years before becoming scrap.

The service condition was established for each of these cycles according to the age of the rail in each particular cycle. In order to do this it was necessary to ascertain the value of relay and scrap rail. Investigation led to the conclusion that relay rail of the Texas Midland Railroad had a net value of $23.50 per gross ton and scrap rail a net value of $9 per gross ton. The total gross tons of rail of each class were determined by the calculation of theoretical weights, not taking into account any loss due to wear.

Account No. 10, other track material.—The unit prices applied to the various items of property classified under this account are representative of commercial prices f. o. b. common points on the Texas Midland Railroad to which are applied the cost of unloading and inspection.

The unit prices on various items of property are shown in detail on the schedules of cost of reproduction.

Angle bars were given the same service condition assigned to the cycle of rail with which they were associated.

Account No. 11, ballast.—The ballast was secured from several sources and the prices applied depend upon where the ballast was used.

The burned-clay ballast used between Kaufman and Greenville was secured at the Kaufman pit and burned-clay ballast used between Commerce and Paris was secured at the Enloe pit.

The cost f. o. b. cars for cinders and sand includes only the expense

of loading. In determining the final prices applied to cinders, it was assumed that all cinders would have an average haul on the basis that they were secured at Terrell.

No mortality tables or statistical data were available from which the service condition of the various classes of ballast could be estimated, and this was determined solely by observation.

Account No. 12, tracklaying and surfacing.—The unit price applied as shown in the schedules of cost of reproduction is representative of contract prices for work of this class in the vicinity of northern Texas.

Account No. 13, right-of-way fences.—The unit price applied to the various items of this account include the expense of installation. The service condition was determined by using the principles adopted by the engineering board.

Account No. 15, crossings and signs.—The unit price applied to property embraced in this account includes cost of installation and all other expenses incident thereto.

238 *Account No. 16, station and office buildings.*—The costs of reproduction new and of reproduction less depreciation of station and office buildings were determined by applying unit prices to the various parts of the building.

The unit prices used for concrete masonry, rubble masonry, and excavation for foundations are representative contract prices for work in the vicinity of northern Texas.

Furniture and fixtures were found to be different for each building, and a unit price for each individual piece of furniture was established. Typewriters, adding machines, and similar items were considered furniture.

In establishing the service condition of buildings each was divided into a number of elements, as roof, outside walls, inside finish of outside walls, ceiling, partitions, floorings, openings, and foundations. The age of the different buildings was ascertained, which in general is the age of each element. Each element was carefully inspected, and a service condition was established, based upon the age and expected life, modified by actual observations.

Account No. 17, roadway buildings.—The costs of reproduction new and of reproduction less depreciation of roadway buildings were established by the same methods as used in Account 16, station and office buildings.

Account No. 18, water stations.—In obtaining the costs of reproduction new and of reproduction less depreciation of buildings for water stations, the same methods were used as for Account 16, station and office buildings. The unit prices applied to wells of various sizes are based upon the representative prices of contract work in the vicinity of northern Texas.

Account No. 19, fuel stations.—There is only one structure, which is located at Paris, coming under this account. This structure, being very similar to frame trestles, the costs of reproduction new and of reproduction less depreciation were determined by the same methods as used for timber trestles in Account 6, bridges, trestles, and culverts.

Account No. 20, shops and engine houses.—The costs of reproduction new and of reproduction less depreciation of shops and engine houses were established by the same method as used in Account 16, station and office buildings.

Account No. 26, telegraph and telephone.—The only property which the Texas Midland owns under this account is a private telephone line from the general office to the machine shops at Terrell. A detailed bill of material is shown in the schedules of cost reproduction.

The unit prices applied are the average of commercial prices in the vicinity of northern Texas. The whole amount of the
239 property being so small, the service condition was determined solely from observation, no attempt being made to apply mortality tables.

There are included in the cost of reproduction the expenditures the Texas Midland incurred building the Western Union Telegraph lines.

Account No. 27, signals and interlockers.—The price applied to interlockers was based upon representative contract prices for interlockers of similar character installed complete.

In determining the cost of reproduction new and the cost of reproduction less depreciation of buildings, coming under this account, the same methods were used as set forth in Account 16, station and office buildings.

Account No. 29, power-plant buildings.—In determining the cost of reproduction new and the cost of reproduction less depreciation of buildings, the same methods were used as set forth in Account 16, station and office buildings.

Account No. 32, power distribution system.—The items of property coming under this account are but small in value. The unit prices determining the cost of reproduction are commercial prices for property of these classes plus the cost of installation.

Account No. 35, miscellaneous structures.—Under this account have been classified ways for unloading telegraph poles and bridge timbers at Terrell, Tex., cost of reproduction new being $84, and the cost of reproduction less depreciation, $29.

Account No. 37, roadway machines.—The aggregate of property classified under this account is small, amounting to only $2,306, the items of which with prices applied are shown in detail, in the schedules of cost of reproduction.

Account No. 38, roadway small tools.—The property under this account is made up of numerous items. The service condition was determined by observation, the conclusion being reached that the small roadway tools were in a service condition per cent slightly above the average, the amount applied being 55 per cent.

Account No. 39, assessments for public improvements.—The carrier's records showed that assessments aggregating $9,826.78 had been made against it for public improvements, which have not been included in the schedules of reproduction or the summaries thereof.

Account No. 40, revenues and operating expenses during construction.—The construction program adopted did not contemplate

hat there would be any revenues which would be classified under his account.

Account No. 41, cost of road purchased.—The Texas Midland purchased that part of its line from Garrett, Tex., to Roberts, Tex., which transaction and the amounts have been fully set forth
240 in Appendix 2. The physical property of this part of the road has been inventoried and classified under the proper accounts and shown in the schedules of cost of reproduction.

Account No. 42, reconstruction of road purchased.—The statement under Account 41, cost of road purchased, is applicable to reconstruction of road purchased.

Account No. 43, other expenditures, road.—To provide for the expense of freight, over the line of the road during construction, and similar miscellaneous items, an amount of $50 per mile of main track was estimated as sufficient.

Account No. 44, shop machinery.—Each machine or piece of equipment of any consequence is listed separately with the unit price applied, which price includes the foundation and installation. Small hand tools, numerous but of small individual value, were individually priced, then grouped, and only the totals for groups are shown on the schedules of cost of reproduction. The service condition for machinery and equipment was determined by actual observation, having in mind the age and the expected service life. The service condition of small hand tools and other similar property was generally considered as 50 per cent.

Account No. 45, power-plant machinery.—The property under this account was treated in the same manner as Account No. 44, shop machinery and tools.

Account No. 51, steam locomotives.—Each locomotive was inspected for the purpose of identifying the property and making observations as to additions and betterments which have been applied since the locomotive was originally purchased. The unit prices applied are representative prices of locomotives of each class, and include the freight from the locomotive works, also the cost of tool equipment, setting up, and breaking in. The locomotives which were purchased secondhand were given a "cost of reproduction new" at the secondhand price, which was subsequently depreciated.

Account No. 53, freight-train cars.—All freight-train cars were inspected to establish their existence and service condition. Prior to the beginning of this inspection the carrier was asked to furnish a list of its freight equipment, which was used as a guide for the inspection. It was ultimately found that this list of equipment was in error 22½ per cent, which error was definitely established and acknowledged by the carrier. Among other things which brought about this error were: (*a*) A number of cars reported by the carrier did not exist; (*b*) cars were in existence of which the carrier had no record; and (*c*) two or more cars in existence carried the same number.

241 The unit prices applied to freight-train cars are representative prices paid by carriers for equipment of the various classes in the vicinity of northern Texas, which include freight from

the factory. Nothing is included for design, engineering, or inspection, excepting that which was incurred by the manufacturer and is included in the original price.

Account No. 54, passenger-train cars.—All passenger-train cars were inspected to determine their existence and their service condition.

The unit prices applied are representative of those paid by carriers in the vicinity of northern Texas, including the freight from the factory. Nothing is included for design, engineering, or inspection, excepting that incurred by the manufacturer and included in the original price.

Account No. 55, motor equipment of cars.—The Texas Midland owns two motor passenger cars, which are used in suburban service. The equipment was practically new and the service condition was determined by actual observation.

The equipment for these two cars coming under this account was included in the contract price paid for the cars as a whole and the unit price applied to this equipment was based upon those contracts. The reporting of all the expense for these cars under this account is not in exact conformity with the classification of accounts. That part of the equipment such as trucks and body of the car should be classified under Account 54, passenger-train cars, but because of the impracticability of separating the costs of the various parts of the cars, these costs are shown in their entirety under this account.

Account No. 57, work equipment.—The property under this account was inspected to establish the existence of the property. The unit prices applied are representative of the prices paid by the carrier for property of this class, including freight from the factory. Nothing has been included for design, engineering, or inspection, excepting that incurred by the manufacturer and included in the original price.

Account No. 71, organization expenses; Account No. 72, general officers and clerks; Account No. 73, law; Account No. 74, stationery and printing; Account No. 75, taxes; and Account No. 77, other expenditures, general.—It was assumed that these accounts would be an amount equal to 1½ per cent of the road accounts, except Account 2, land for transportation purposes.

Account No. 76, interest during construction.—It has been assumed that this account would be an amount equal to 6 per cent per annum for 10 months or one-half the construction period, 7 months plus 3 months upon the road and general expenditure ac-
242 counts, excepting Accounts No. 2 and No. 76; plus 6 per cent for 3 months upon the equipment accounts.

Jointly owned property.—The Texas Midland Railroad owns jointly with other carriers the following property, of which schedules of reproduction have been prepared and are included as a part of the Texas Midland report. These jointly owned properties are as follows:

Val. sec.	Joint owner.	Total for joint property. Texas Midland's proportion ratio to total.	Cost of reproduction new.	Cost of reproduction less depreciation.
		Per cent.		
T. M., 2-T.....	Houston & Tex. Cent. R. R..	50	$2,182	$1,698
T. M., 3-T.....	Texas & N. O. R. R.....	50	2,789	1,966
T. M., 4-T.....	Mo. Kans. & Texas R. R. & St. L. & S. W. Ry.....	33⅓	5,465	3,815
T. M., 5-T.....	St. L. & S. W. Ry.....	50	39,441	33,897

General Summary.

The costs of reproduction new and of reproduction less depreciation of the property of the Texas Midland Railroad are shown in the following general summary:

	Cost of reproduction new.	Cost of reproduction less depreciation.
Wholly owned by Texas Midland R. R...	$3,437,327	$2,577,389
T. M., 2-T: Jointly owned with Houston & Texas Central R. R.; Texas Midland's proportion 50 per cent.....	1,091	849
T. M., 3-T: Jointly owned with the Texas & New Orleans R. R.; Texas Midland's proportion 50 per cent.....	1,395	983
T. M., 4-T: Jointly owned with the Missouri, Kansas & Texas Ry. Co. of Tex., and the St. Louis Southwestern Ry Co. of Texas.; Texas Midland's proportion 33⅓ per cent.....	1,822	1,272
T. M., 5-T: Jointly owned with St. Louis & Southwestern Ry. Co. of Tex.; Texas Midland's Proportion 50 per cent.....	19,721	16,949
Texas Midland's proportion of jointly owned property.....	24,029	20,053
Grand total for Texas Midland R. R.	3,461,356	2,597,442

Noncarrier property.—Near Roberts, Tex., about 900 feet east of survey station 228 on what was formerly the right of way of the line leading from Garrett to Roberts, is an old depot approximately 20 by 44 feet, which is still owned by the Texas Midland Railroad, but leased to a farmer as a barn. It was estimated that the cost of reproduction new of this building would be $642, and of reproduction new less depreciation, $64.

243 At Commerce, Tex., near survey station 3880 is located a one-story frame cottage 16 by 28 feet, which was included in the purchase of right of way at the time the road was built. However, as far as information is available, this cottage has never been used for transportation purposes but has always been rented as a residence. It was estimated that the cost of reproduction new of this cottage would be $1,063, and of reproduction less depreciation, $638.

Neither of the above structures is shown in the schedules of reproduction or included in the summaries thereof.

Summary.

A.—Wholly Owned and Used for the Purposes of a Common Carrier

Acct.	Classes.	Cost of reproduction of road and equipment. New.	Less depreciation.
	I. Road.		
1.	Engineering	$58,773	$58,773
3.	Grading	411,886	411,491
6.	Bridges, trestles, and culverts	387,792	289,461
8.	Ties	281,112	140,557
9.	Rails	525,134	434,205
10.	Other track material	103,295	65,944
11.	Ballast	227,255	181,804
12.	Track laying and surfacing	239,631	173,413
13.	Right-of-way fences	48,443	33,911
15.	Crossings and signs	29,565	23,217
16.	Station and office buildings	109,319	79,965
17.	Roadway buildings	27,004	17,491
18.	Water stations	30,428	22,267
19.	Fuel stations	7,675	5,383
20.	Shops and engine houses	68,155	51,447
26.	Telegraph and telephone lines	8,715	5,863
27.	Signals and interlockers	9,834	7,619
29.	Power-plant buildings	6,474	5,308
32.	Power-distribution systems	1,867	1,253
35.	Miscellaneous structures	84	29
37.	Roadway machines	2,306	1,404
38.	Roadway small tools	2,295	1,263
43.	Other expenditures—road	5,528	4,091
44.	Shop machinery	57,333	41,430
45.	Power-plant machinery	21,009	15,134
	Total, 1, and 3 to 45, inclusive	2,670,912	2,072,723

II. Equipment.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
51.	Steam locomotives	187,928	107,643
53.	Freight-train cars	190,432	120,423
54.	Passenger-train cars	73,455	39,236
55.	Motor equipment of cars	57,020	53,769
57.	Work equipment	73,236	41,869
	Total, 51 to 57, inclusive	582,071	362,940

III. General Expenditures.

71.	Organization expenses	40,064	31,091
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing		
75.	Taxes		
76.	Interest during construction	144,280	110,635
	Total, 71 to 76 inclusive	184,344	141,726
	Grand total, 1, and 3 to 76, inclusive	3,437,327	2,577,389

244 B.—Jointly Owned and Used with Houston & Texas Central Railroad, One-half Each; 0.212 miles, Valuation Section T. M., 2-T.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
1.	Engineering	$45	$45
3.	Grading	190	190
6.	Bridges, trestles, and culverts	140	105
8.	Ties	393	197
9.	Rails	850	722
10.	Other track material	107	86
12.	Tracklaying and surfacing	193	143
15.	Crossings and signs	129	106
	Total, 1 and 3 to 15, inclusive	2,047	1,594
71.	Organization expenses	31	24
72.	General officers and clerks		
73.	Law		
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures, general		

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
76.	Interest during construction.....	104	80
	Total, 71 to 77, inclusive...	135	104
	Grand total, 1, and 3 to 77, inclusive	2,182	1,698
	Texas Midland's portion.....	1,091	849

C.—Jointly Owned and Used with Texas & New Orleans Railroad, One-half Each; 0.12 mile, Valuation Section T. M., 3-T.

Acct.	Classes.	Cost of reproduction. New.	Less depreciation.
1.	Engineering	$58	$58
3.	Grading	312	312
6.	Bridges, trestles and culverts.....	617	388
8.	Ties	441	221
9.	Rails	521	452
10.	Other track material	359	203
11.	Ballast	37	30
12.	Tracklaying and surfacing.....	272	182
	Total, 1 and 3 to 12, inclusive	2,617	1,846
71.	Organization expenses.....		
72.	General officers and clerks.....		
73.	Law	39	27
74.	Stationery and printing.....		
75.	Taxes		
77.	Other expenditures, general.....	133	93
76.	Interest during construction.....		
	Total, 71 to 77, inclusive...	172	120
	Grand total, 1 and 3 to 77, inclusive	2,789	1,966
	Texas Midland's portion.....	1,395	983

45 D.—Jointly Owned and Used with the Missouri, Kansas & Texas Railway Co. of Texas and St. Louis Southwestern Railway Co. of Texas, One-third Each; 0.496 Mile, Valuation Section T. M., 4–T.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
1.	Engineering	$113	$113
3.	Grading	163	163
6.	Bridges, trestles, and culverts	921	552
8.	Ties	753	377
9.	Rails	1,450	1,210
10.	Other track material	672	401
11.	Ballast	246	197
12.	Tracklaying and surfacing	775	543
15.	Crossings and signs	35	26
	Total, 1, and 3 to 15, inclusive	5,128	3,582
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	77	53
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures, general		
76.	Interest during construction	260	180
	Total, 71 to 77, inclusive	337	233
	Grand total, 1, and 3 to 77, inclusive	5,465	3,815
	Texas Midland's portion	1,822	1,272

E.—Jointly Owned and Used with St. Louis Southwestern Railway of Texas, One-half Each; 1.091 Miles, Valuation Section T. M., 5–T.

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
1.	Engineering	$814	$814
3.	Grading	2,027	2,027
6.	Bridges, trestles, and culverts	483	350
8.	Ties	1,875	938
9.	Rails	3,543	3,019
10.	Other track material	1,072	713
11.	Ballast	707	566

Acct.	Classes.	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
12.	Tracklaying and surfacing	1,513	1,104
15.	Crossings and signs	2,038	1,485
16.	Station and office buildings	18,146	16,294
18.	Water stations	4,790	4,503
	Total, 1 and 3 to 18, inclusive	37,008	31,813
71.	Organization expenses		
72.	General officers and clerks		
73.	Law	555	475
74.	Stationery and printing		
75.	Taxes		
77.	Other expenditures, general		
76.	Interest during construction	1,878	1,609
	Total, 71 to 77, inclusive	2,433	2,084
	Grand total, 1 and 3 to 77, inclusive	39,441	33,897
	Texas Midland's portion	19,721	16,949

246 APPENDIX 2.

Introductory.

Previous to 1891 the Texas Central Railway Company had constructed a line of railroad from Garrett to Roberts, both in the state of Texas. This line was 52.03 miles in length, was not connected with the main line of the Texas Central, and was commonly known as the Northeastern branch.

In 1891 the property of the Texas Central Railway Company, including this branch, was sold at foreclosure sale to a committee acting for the bondholders of that company. Mrs. Hetty R. Green, who owned a considerable number of these bonds, subsequently to the sale made an arrangement with the other bondholders by which her bonds were to be exchanged for the Northeastern branch. The Texas Midland Railroad was organized by her for the purpose of taking over, extending, and operating this 52 miles of railroad which she thus acquired.

The conveyance of this property was finally made by the bondholders' committee directly to the Texas Midland Railroad at the request of Mrs. Green. She furnished the money for the subsequent development of the property.

Corporate History.

Texas Midland Railroad, that being the full name, is a corporation of Texas with its principal office at Terrell in that state and was incorporated December 16, 1892. In February, 1893, it began the operation of its railroad, although the formal conveyance of the Northeastern branch does not seem to have been perfected until the following May. Since February, 1893, this corporation has continued to operate the Texas Midland Railroad. No other corporations are involved in the history of this property.

Construction.

The Texas Midland Railroad at once proceeded to improve and extend its railway, and in the course of these operations constructed three pieces of railroad.

247 1. The southern terminus of the Northeastern branch had formerly been at Garrett, but Ennis was now made the southern terminus and a piece of railroad 4.619 miles in length was built from Ennis to Midland Junction, 1.93 miles north of Garrett. In 1896 the old line from Midland Junction to Garrett was abandoned.

2. From Roberts, originally the northern terminus of the Northeastern branch, the road was extended to Greenville, a distance of 18.766 miles.

3. A new lien was constructed from Commerce to Paris, 37.629 miles in length.

The first two of these extensions were opened for busienss in 1894; the last about October 1, 1896. The distance from Greenville to Commerce is approximately 14 miles, and the Texas Midland Railroad uses between these points under a trackage arrangement the line of the St. Louis Southwestern Railway Company of Texas, thereby obtaining a through operating line from Paris upon the north to Ennis upon the south about 125 miles long.

Capitalization.

On January 27, 1893, the purchasing trustees executed a deed of the Northeastern branch to the Texas Midland Railroad, which was recorded on April 4, 1893, and was delivered to the Texas Midland Railroad on May 23, 1893, at the request of Mrs. Green. On the same date the Texas Midland Railroad voted to issue to Mrs. Green $500,000 of its paid-up capital stock and $750,000 of its 5 per cent bonds.

The company also issued to Mrs. Green $150,000 of 5 per cent betterment bonds, which were secured by a first mortgage upon the property, and Mrs. Green upon her part paid to the company $75,000 in cash. As a result of these transactions the capitalization of the company stood as follows:

May 23, 1893, 5,000 shares capital stock, par value	$500,000
July 27, 1893, first mortgage 5 per cent betterment bonds, par value	150,000
July 27, 1893, second mortgage 5 per cent purchase money bonds, par value	750,000
Total	1,400,000

The laws of Texas then provided and still provide that a railway company shall not issue stocks and bonds in excess of the value of its property, as determined by the railway commission of that state. In 1895, the Texas commission valued the property of the Texas Midland Railroad then in existence, and in 1901 it valued the additions to that property which had been made subsequently to its first
248 valuation, and at the same time readjusted the value of its equipment. The total value as thus established slightly exceeded $2,112,000. Included in this sum is the value of 1.93 miles of road between Midland Junction and Garrett which was abandoned in 1895. The amount applicable to the abandoned line was shown of record to be $19,277.54. Our accounting rules require that the ledger value of retired property be credited to the investment account upon its retirement, and if the ledger value of the retired property be not separately shown a proportionate share of the ledger value of the property of which it is a part should be credited.

In 1908, the capitalization of the Texas Midland Railroad was recast. Of the 5,000 shares of capital stock outstanding 3,880 were canceled, leaving 1,120 shares outstanding. All of the original $900,000 of bonds were retired and new mortgage bonds, bearing interest first at the rate of 4½ per cent, but subsequently at the rate of 4 per cent, were issued to the amount of $2,000,000. This left the capitalization of that company as follows:

Capital stock, par value	$112,000
Mortgage indebtedness, 4 per cent, par value	2,000,000
Total	2,112,000

The foregoing has ever since continued to be and was the capitalization of the company at June 30, 1914.

It will be subsequently noted that the money for the development of this property was furnished by Mrs. Green, for the most part under the name of the Texas Midland Construction Company. At the time of the recasting of the capitaliation as above, and apparently as a part of that transaction, the indebtedness of the Texas Midland Railroad to the Texas Midland Construction Company was canceled except for the amount of $500,000, which is still outstanding and which constitutes a deferred liability in that amount and is really a part of the capitalization of the company.

Amounts Realized from the Sale of Securities.

The entire first issue of stocks and bonds as given above, aggregating $1,400,000, was delivered to Mrs. Green, who in consideration therefor delivered the deed to the Northeastern branch to the Texas Midland Railroad and paid to it $75,000 in cash.

The value of this 52 miles of railroad at the date of conveyance is not known. The amount expended in its construction, as shown by the records of the Texas Central Railway Company, aggregates $550,987.15.

Mrs. Green was the owner of 750 bonds of the par value of $1,000 each out of a total issue of 3,999 bonds against the Texas
249 Central. Her pro rata share of the amount received from the foreclosure sale, less the expenses of said sale and certain necessary payments, was $113,527.50. She surrendered her 750 bonds and paid the purchasing trustees for the bondholders $75,000 in cash for the Northeastern branch.

As a part of this arrangement, Mrs. Green received a conveyance of certain lands not belonging to the Northeastern branch and assumed certain contingent liabilities. It can not be determined whether the net result of these collateral transactions was in favor of or against Mrs. Green, but they were insignificant in amount and may be disregarded.

There is nothing in the records of the Texas Midland Railroad to show what Mrs. Green paid for her 750 bonds nor when she paid it, nor what, if anything, she had previously received on account of said bonds.

If it be assumed that the price at which the property of the Texas Central Railroad Company sold under foreclosure was the real value of the property itself, and that the bargain between Mrs. Green and her fellow bondholders was a fair one, then Mrs. Green paid for her $1,400,000 of securities $188,527.50 in property and $75,000 in cash. In fact, there seems to be no reason for assuming that the above amount did represent the actual value of the property transferred by Mrs. Green to the Texas Midland Railroad, and it can only be affirmed that she paid for these securities a rather poor railroad 52 miles long and $75,000 in money.

As already stated, the Texas Midland Railroad improved that portion of its railroad which it received from Mrs. Green and also constructed three pieces of new line. The money with which these expenditures were made was furnished by Mrs. Green, mostly in the name of the Texas Midland Construction Company, but partly through the Chemical National Bank of New York City. The total advances made by her in the name of the construction company previous to August, 1898, were $1,658,762.90, but of this $116,481.81 had been returned in cash and materials, leaving a net advance through that company of $1,542,281.09. The advances made through the Chemical National Bank were $88,168.43.

When the capitalization was recast in 1908 the stock which was canceled and the old bonds which were retired were delivered by

Mrs. Green to the company, which in turn delivered to her the $2,000,000 of new 4 per cent bonds. No evidence exists of any agreement or arrangement between Mrs. Green and the company with respect to this transaction except the entries upon the books of the Texas Midland Railroad itself. From them it would appear that the $2,000,000 in bonds was used to retire the $388,000 of
250 capital stock, the $900,000 of old bonds, to extinguish the debt of $88,168.43 due Mrs. Green for advances through the Chemical National Bank, to pay upon the debt due the Texas Midland Construction Company $264,061.38, and to adjust $359,770.19 of interest due bondholders. This would leave due the Texas Midland Construction Company $1,278,219.71, of which $778,219.71 appears to have been canceled, leaving an indebtedness of $500,000 to that company or Mrs. Green.

In this adjustment no interest whatever was reckoned upon the advances of the Texas Midland Construction Company or the Chemical National Bank.

In 1899 the Texas Midland Construction Company paid $88,681.17 for 100 box cars which were delivered to the Texas Midland Railroad. It would appear therefore that the total cash payments into the treasury of this company in consideration of its stocks and bonds have been:

Account first mortgage bonds	$75,000.00
Through the Texas Midland Construction Co.	1,542,281.09
Through the Chemical National Bank	88,168.43
On account of box cars	88,681.17
Total	1,794,130.69

The company never has paid any dividends upon its capital stock, nor has any interest ever been paid upon the $500,000 left due on account of advances by the construction company in the adjustment of 1908. It has paid interest upon its bonds aggregating in all $334,596.26.

Gross and Net Earnings.

The Texas Midland Railroad opened its books and began to transact business on February 26, 1893. From that date to and including June 30, 1914, its gross earnings from operation and its operating expenses were:

Gross earnings (railway operating revenues)	$9,939,298.80
Operating expenses (railway operating expenses)	8,539,431.88
Leaving net earnings (net revenue from railway operation)	1,399,866.92
During the same period taxes assessed against the Texas Midland aggregated (railway tax accruals)	274,367.20
Leaving a net income of (railway operating income	1,125,499.72

To this should be added income from nonoperating sources of (nonoperating income)	1,504.22
251 Making gross income for the period (gross income)	1,127,003.94
During this period the Texas Midland accrued for rents, hire of equipment, and interest on unfunded debt (chargeable to deductions from gross income)	357,094.74
Leaving for the payment of interest and dividends during this period (also chargeable to deductions from gross income)	769,909.20

The details from which the above statement is summarized appears in Exhibit C, which is subjoined to this appendix. An attempt was made to rewrite the books of the Texas Midland from their inception down to June 30, 1914, in accordance with our present accounting rules. The figures which appear in Exhibit C are those obtained by our accountants through this process of revision and are not the figures which stand upon the books of the carrier.

The Texas Midland Railroad received, as subsequently appears in more detail, certain donations of money and of operative lands which had been purchased on its account with money donated and which are treated as equivalent to the money paid for them, aggregating $66,702.46.

The foregoing sums, viz, the amounts paid in by Mrs. Green, the donations, the net corporate income, and $20,000 received on notes, are apparently all that this company had received from its inception down to June 30, 1914, with which to construct its property and to pay interest and dividends. It did pay in interest, as already noted, the sum of $334,596.26, the balance being used in the construction and development of the property and for the acquisition of other assets. The maximum available for the construction of the property would therefore be $2,973,528.12, made up as follows:

Cash from Mrs. Green		$1,794,130.69
Net income from operation	$769,909.20	
Add depreciation charges included in expenses	99,303.04	
		869,212.24
Donations of land and cash		66,702.46
Net proceeds from sale of notes		20,000.00
Expenditures of the Texas Central Railway upon the Northeastern branch		550,987.15
Appraised value of equipment which came to the Midland with the Northeastern branch of the Texas Central Railway		21,000.00
		3,322,032.54

252 Less:

Interest paid	$334,596.26	
Cash on hand June 30, 1914	13,908.16	
		348,504.42
Total		2,973,528.12

Investment in Road and Equipment.

The investment in road and equipment as stated in the records of the Texas Midland Railroad at June 30, 1914, amounted to $2,748,171.46, but this sum includes $1,250,000 in securities issued to Mrs. Green in consideration of the transfer of the Northeastern branch of the Texas Central Railway and the payment to the purchasing trustees of $75,000 in cash.

It became evident that the investment account of this carrier had not been correctly kept and an attempt was made to restate that account in accordance with our accounting rules now in force. For this purpose the entire books of the Texas Midland Railroad were in effect rewritten, every voucher being examined and reassigned as far as possible.

While the work of rewriting the accounts of this carrier as above was enormous, the result was in no way satisfactory and can be accepted only as a maximum. It was frequently impossible to determine whether the expenditure covered by a particular voucher was devoted to operation or represented a betterment to the property. Again, while it was usually possible to identify charges covering additions to the property, it was not possible to determine to the same extent retirements nor to determine the amount to be deducted from the investment account on account of such retirements, except with respect to 1.93 miles of road between Midland Junction and Garrett, which was abandoned in 1896, which amount has been determined.

This carrier expended about $2,200,000 in rehabilitating the 52 miles purchased, constructing about 60 miles of new extensions, including subsequent additions and betterments to its entire line, and for equipment. It it possible that some part of this amount which was expended in rehabilitating the purchased mileage should have been charged to operating expenses, but the records did not permit of the division being made.

In rewriting the accounts of the Texas Midland Railroad it was found that numerous items of expenditure were erroneously classified. Items were found in the investment account that have been excluded in making our adjustments, while other items have been added that have improperly been charged to other accounts. As a re-
253 sult of these adjustments the maximum of the investment account has been restated at $2,892,360.94, which sum is represented by the following expenditures:

Expenditures by the Texas Central Railway	$550,987.15
Appraised value of equipment transferred by the Texas Central Railway to the Texas Midland Railroad	21,000.00
Expenditures by the Texas Midland Railroad and Texas Midland Construction Co.	2,214,890.91
Expenditures by Mrs. Green and others	124,760.42
	2,911,638.48
Deduction for 1.93 miles abandoned	19,277.54
Total investment in road and equipment (maximum)	2,892,360.94

A summary of the items embraced in the adjustment of this account will be found in Exhibit A.

Original Cost to Date.

The original cost to date of each piece of property owned by the Texas Midland Railroad can not be ascertained from available records. In lieu of an exhibit of that kind, it was possible to compile data which show that the amount of money expended upon its property did not exceed $2,892,360.94. This figure must not be accepted as representing the precise original cost of its existing property, as it may include the cost of other retired property which could not be identified in the accounts. It also includes some expenditures incurred in rehabilitating the 52 miles of the Texas Central Railway which should, properly speaking, have been charged to operating expenses as renewals. It is, therefore, stated as a maximum.

A division of the sum designated as maximum expenditures among the three general classes of expenditures is:

Road	$2,368,828.00
Equipment	522,874.59
General expenditures	658.35
Maximum expenditures	2,892,360.94

A distribution of this sum between the Texas Central Railway, the Texas Midland Railroad, and donations, as well as by primary accounts, will be found in Exhibit B.

Equipment.—So far as determinable from the records of the company the original cost to date of the equipment of the Texas Midland Railroad now on hand is given below by classes:

254	No. of units.	Cost.
Steam locomotives	17	$180,547.84
Freight-train cars	246	165,771.55
Passenger-train cars, including motor equipment	18	116,595.45
Work equipment	55	59,959.75
Total	336	522,874.59

Box car No. 1894 (galvanized sides and roof), included in freight-train cars reproduction cost, is not included in original cost, as it could not be ascertained whether this car had been built at the company's shops and the cost thereof charged to operating expenses, or whether it had been donated; no record of the cost of the car could be found in the accounts.

It should be carefully noted that the above figures do not purport to be original cost to date, but simply the original purchase price plus such other items of cost incurred at that time as appeared upon the books of the carrier, together with such expenditures for improvements as could be allocated.

Aids, Gifts, Grants, and Donations.

The following is a summary of the cash, land, and other values donated to the Texas Midland Railroad:

Cash subsidies by citizens of five communities	$19,981.46
Right-of-way lands donated	44,608.75
Nontransportation lands donated	3,165.00
Equipment donated by Texas Midland Construction Co.	88,681.17
Interest due bondholders canceled	121,249.96
Money advances by Texas Midland Construction Co., obligations to repay canceled	778,219.71
Donations by individuals and companies account spur tracks	1,130.30
Other donations	981.95
Total aids, gifts, grants, and donations	1,058,018.30

Cash subsidies.—Five communities along the line of the Texas Midland Railroad, as an inducement to the carrier to extend and construct its line to and through those communities, volunteered not only to secure the right of way for the carrier, but also to contribute certain sums in cash. The sums which it was agreed would be contributed were not in all cases received, the amounts actually contributed being as follows:

255	Citizens of Ennis, Tex	$5,963.25
	Citizens of Greenville, Tex	3,000.00
	Citizens of Paris, Tex	5,000.00
	Citizens of Cooper, Tex	5,018.21
	Citizens of Commerce, Tex	1,000.00
	Total	19,981.46

Right-of-way lands.—In addition to the cash subsidies which the foregoing communities agreed to contribute to the carrier, they also obligated themselves to secure lands for right of way and other purposes for the carrier, through the counties in which those communities were located, free of all cost to the carrier. Deeds enumerating a cost of $17,773.75 were found in evidence for which no

record of payment could be located in the accounts of the carrier. This amount is apportioned as follows:

Right-of-way lands	$44,608.75
Nontransportation lands	3,165.00
Total	47,773.75

Equipment.—One hundred box cars were purchased for the Texas Midland Railroad and paid for by the Texas Midland Construction Company. The cost of this equipment was $86,500, less 1 per cent, and an additional sum of $3,046.17 for air brakes, or a total of $88,681.17 which is treated as a donation.

Interest due bondholders canceled.—Vouchers aggregating $37,500, covering interest during 1904 and 1905, were receipted by the payee, Mrs. Green, and returned to the carrier; no money, however, was paid in this transaction. Interest coupons from July 1, 1908, to August 1, 1909, amounting to $83,749.96, were surrendered and canceled without payment, the result being that the company had returned to it $121,249.96 in interest, which is also treated herein as a donation.

Money advances by Texas Midland Construction Company.—This company advanced money to and for account of the railroad to the extent of $1,658,762.90. Of the sums advanced $500,000 is still due, $116,481.81 was liquidated by cash and material payments, $264,061.38 was paid by an equal amount of first-mortgage bonds in 1908, and the remainder, $778,215, was canceled in August, 1908. It does not appear that these advances were evidenced by notes or other forms of certificates of indebtedness, and the cancellation of this amount is recorded only in the accounting adjustment of the item.

Donations account of spur tracks.—There was contributed by individuals and companies the sum of $1,130.30 to reimburse the railroad for expenditures made by it in the construction of side
256 and spur tracks; the property so constructed, it is understood, is owned by the carrier.

Other donations.—Two checks, aggregating $981.95, were issued by the Texas Midland Construction Company, one to cover $250 personal expenses of E. H. R. Green in the purchase of rail, the other for $731.95 for freight on slack coal for burning ballast.

Leased Railway Property.

As heretofore stated, the Texas Midland Railroad makes use of certain tracks and facilities of other companies, as follows:

Name of owning company.	Description and location of facility.	Amount payable for use for the fiscal year 1914.
St. Louis Southwestern Railway Co. of Texas	13.97 miles of track, Greenville, to Commerce, Tex.	$32,133.33
Houston & Texas Central Railroad Co.	1.21 miles of track and passenger station, Ennis, Tex.	1,800.00
Paris & Great Northern Railroad Co.	0.39 of a mile of track and passenger station, Paris, Tex.	1,172.43
Total		35,105.76

During the same period the carrier received $626.50 rent for us of facilities owned by it, $182.50 of which was received from carrier and $444 from other tenants.

Materials and Supplies.

An inventory of the materials and supplies of the railroad com pany was taken by the accountants, jointly with the representative of the carrier, as of June 30, 1914. The prices applied were ob tained from invoices rendered the carrier in the purchase of i materials and supplies and from cost data compiled by the accoun ants in their analysis of the carrier's records; the representatives the carrier also cooperated in this feature of the work. The resu of the inventory was to show an increase in the material accounts nearly $14,000, and although the carrier was possessed of a co of the inventory since July 17, 1915, no reconciliation was ma by it of the material account, and the unadjusted book record h been used in the general balance sheet statement. A distribution the book record and the inventory follows:

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Account.	Book record.	Inventor
Fuel	$1,383.94	$1,869.
General store	6,216.22	6,495.
Crossties	15,033.70	13,073.
Shop	39,496.18	58,284.
Roadway	20,813.20	17,133.
Total	82,943.24	96,857.

In stating the value of materials and supplies on hand no deduction whatever has been made for depreciation. In all cases of new property the cost figure is applied. In cases of secondhand property *at* attempt was made to apply a fair secondhand price, but there was comparatively little of such property.

Exhibits.

Subjoined in this appendix are exhibits, as follows:
Exhibit A.—Adjustment of investment in road and equipment.
Exhibit B.—Classification of recorded expenditures for road and equipment.
Exhibit C.—Income account for the period, February 26, 1893, to June 30, 1914.

258 EXHIBIT A.

Adjustment of Investment in Road and Equipment.

Investment in road and equipment as recorded....		$2,748,171.46
Add:		
Property expenditures charged to operating expenses	$184,505.55	
Property expenditures charged to income account	453,991.92	
Property expenditures charged to suspense account	22,345.99	
Appraised value of equipment acquired from Texas Central Railway	21,000.00	
Depreciation credited to this account in error.....	152,727.53	
Contribution of interest credited to this account in error.....	37,500.00	
Arbitrary credit to adjust this account to par value of securities issued, now reversed	32,280.05	
		904,251.04
		3,652,422.50
Deduct:		
Expenditures now transferred to operating expenses	51,349.64	
Expenditures now transferred to profit and loss	32,069.36	
Discount on bonds.....	75,000.00	
Credit in error to revenue account	90.50	

Two dismantled locomotives now written out		6,000.00	
Abandonment of 1.93 miles of roadbed and track		19,277.54	
Sidetrack expenditures included as aids		1,130.30	
Noncarrier lands		891.79	
Securities issued in acquisition of property of Texas Central Railway	$1,250,000.00		
Less recorded cost of construction	550,987.15		
		699,012.85	
			846,266.90
Investment by Texas Midland Railroad and Texas Central Railway			2,767,600.52
Investment by others, classed as aids, donations, etc.			124,760.42
Total investment (maximum)			2,892,360.94

EXHIBIT B.—*Classification of recorded expenditures for road and equipment.*

Account.	Expended by— Texas Central Railway.	Texas Midland Railroad	Total expenditures.	Donated to Texas Midland Railroad.	Total.
Road.					
1. Engineering	$17,603.42	$29,612.38	$47,215.80	.....	$47,215.80
2. Land for transportation purposes.	8,369.80	13,578.89	21,948.69	$44,608.75	66,557.44
3. Grading	106,269.58	249,531.23	355,800.81	.....	355,800.81
6. Bridges, trestles, and culverts....	72,881.20	199,448.72	272,329.92	.....	272,329.92
8. Ties	85,035.31	130,455.50	215,490.81	.....	215,490.81
9. Rails	164,521.95	334,387.74	498,909.69	250.00	499,159.69
10. Other track material	.....	58,340.08	58,340.08	.....	58,340.08
11. Ballast	.....	169,300.23	169,300.23	731.95	170,032.18
12. Tracklaying and surfacing	57,398.21	194,174.93	251,573.14	.....	251,573.14
13. Right-of-way fences	.....	38,187.47	38,187.47	.....	38,187.47
15. Crossings and signs	1,368.23	3,872.06	5,240.29	.....	5,240.29
16. Station and office buildings	.....	88,149.74	88,149.74	.....	88,149.74
17. Roadway buildings	12,425.40	7,707.37	20,132.77	.....	20,132.77
18. Water stations	710.85	33,947.03	34,657.88	.....	34,657.88
19. Fuel stations	.....	4,123.92	4,123.92	.....	4,123.92
20. Shops and enginehouses	43.00	47,326.19	47,369.19	.....	47,369.19
26. Telegraph and telephone lines....	.....	3,277.89	3,277.89	.....	3,277.89
27. Signals and interlockers	.....	10,205.55	10,205.55	.....	10,205.55
29. Power plant buildings	.....	5,154.46	5,154.46	.....	5,154.46
36. Paving	.....	647.58	[1] 647.58	.....	[1] 647.58

[1] Credit.

Classification of recorded expenditures.—Continued.

Account.	Expended by— Texas Central Railway.	Texas Midland Railroad	Total expenditures.	Donated to Texas Midland Railroad.	Total.
Road.					
37. Roadway machines	.....	2,767.17	2,767.17	.....	2,767.17
38. Roadway small tools	106.50	762.71	869.21	.....	869.21
39. Assessments for public improvements	.....	9,477.50	9,477.50	.....	9,477.50
43. Other expenditures—Road	4,976.16	101,724.53	106,700.69	.....	106,700.69
44. Shop machinery	.....	47,591.53	47,591.53	.....	47,591.53
45. Power plant machinery	.....	9,070.45	9,070.45	.....	9,070.45
Expenditures for industrial sidings (distributed above) for which the carrier was reimbursed by parties benefited	.....	[1] 1,130.30	[1] 1,130.30	1,130.30	.....
Total road	[4] 531,709.61	1,790,397.39	2,322,107.00	46,721.00	2,368,828.00
Equipment.					
51. Steam locomotives	.....	180,547.84	180,547.84	.....	180,547.84
53. Freight-train cars	.....	87,732.13	87,732.13	[3] 78,039.42	165,771.55
54. Passenger-train cars	.....	116,595.45	116,595.45	.....	116,595.45
57. Work equipment	.....	59,959.75	59,959.75	.....	59,959.75
Total equipment	.....	[5] 444,835.17	444,835.17	78,039.42	522,874.59

General Expenditures.					
71. Organization expenses	.....	374.00	374.00	.....	374.00
72. General office and clerks.....	.....	212.85	212.85	.....	212.85
73. Law	.....	21.50	21.50	.....	21.50
77. Other expenditures—General.....	.....	50.00	50.00	.....	50.00
Total general expenditures.	.....	658.35	658.35	.....	685.35
Grand total	[4] 531,709.61	[2] 2,235,890.91	2,767,600.52	124,760.42	2,892,360.94

[1] Credit.
[2] Includes $21,000 appraised value of equipment acquired with the Northeastern branch of the Texas Central Railway.
[3] Cost of donated equipment in existence on June 30, 1914.
[4] Total expenditure shown for Texas Central Railway is that remaining after making deduction for 1.93 miles of road abandoned.

Fiscal year ended June 30—	Freight revenue.	Passenger revenue.	Mail revenue.	Express revenue.	All other railway operating revenues.	Total railway operating revenues.
1893	$7,164.27	$3,097.80	.....	$508.93	$76.25	$10,847.25
1894	45,050.91	10,866.97	$3,006.95	1,500.00	226.79	60,651.62
1895	165,422.83	23,060.41	2,375.67	2,654.03	64.16	193,577.10
1896	108,612.77	27,202.20	2,823.86	3,120.00	117.69	141,876.52
1897	238,118.30	48,209.72	3,037.43	5,425.13	282.80	295,073.38
1898	356,818.41	71,027.12	4,573.15	6,234.96	591.01	439,244.65
1899	376,018.49	78,210.67	10,554.17	6,955.27	500.16	472,238.76
1900	327,345.20	85,591.04	10,555.09	10,505.91	1,324.71	435,321.95
1901	484,382.90	121,121.06	10,555.09	13,416.66	2,197.28	631,672.99
1902	374,308.97	132,519.61	10,555.09	16,185.55	2,245.38	535,814.60
1903	356,351.86	119,001.54	9,875.52	12,511.26	4,284.15	502,024.33
1904	300,852.07	110,004.47	9,876.48	11,631.36	24,354.34	456,718.72
1905	374,406.53	122,901.54	9,854.52	11,772.47	11,356.25	530,291.31
1906	274,215.60	108,513.74	9,872.53	12,845.47	17,942.35	423,389.69
1907	353,244.51	113,483.25	10,744.54	13,099.39	31,245.20	521,816.89
1908	266,463.92	105,389.77	10,735.50	12,023.30	11,984.53	406,597.02
1909	360,515.32	106,567.85	10,538.42	12,751.31	19,541.67	509,914.57
1910	397,136.38	119,602.66	10,734.22	14,688.47	17,815.66	559,977.39
1911	427,156.02	139,226.34	9,872.78	8,666.53	19,057.21	603,878.88
1912	489,676.84	141,719.29	9,872.52	10,383.44	21,814.67	673,466.76
1913	580,584.42	185,304.02	9,872.52	10,470.08	21,472.53	807,703.57
1914	468,310.34	214,899.93	10,293.34	11,990.91	21,706.30	727,200.85
Total	7,132,056.86	2,187,521.00	180,179.39	209,340.46	230,201.09	9,939,298.80

EXHIBIT C. Continued.—*Income account for the period February 26, 1893, to June 30, 1914.*

Fiscal year ended June 30—	Maintenance of way and structures.	Maintenance of equipment.	Traffic expenses.	Transportation expenses.	General expenses.	Total railway operating expenses.
1893.....	$573.41	$641.67	.....	$4,882.33	$4,912.05	$11,009.46
1894.....	20,548.02	9,683.45	.....	22,696.73	13,030.64	65,358.84
1895.....	56,750.69	20,526.18	.....	68,850.77	43,173.62	189,301.26
1896.....	57,125.34	23,954.09	.....	61,384.84	15,637.54	158,101.81
1897.....	60,123.99	43,426.55	.....	126,061.79	20,298.94	249,911.27
1898.....	94,512.44	44,622.91	.....	178,552.32	22,887.45	340,575.12
1899.....	120,546.01	50,252.00	.....	183,576.07	30,689.80	385,063.88
1900.....	145,698.97	42,821.53	.....	190,518.07	28,551.06	407,589.63
1901.....	142,247.03	83,377.40	.....	197,595.91	40,344.84	463,565.18
1902.....	148,523.32	67,339.26	.....	179,744.84	53,202.85	448,810.27
1903.....	135,697.61	60,973.56	.....	180,527.91	65,413.30	442,612.38
1904.....	142,383.33	59,631.83	.....	193,216.57	40,429.23	435,660.96
1905.....	124,905.68	71,937.51	.....	195,766.80	65,095.06	457,705.05
1906.....	89,991.11	56,658.26	.....	171,189.72	39,087.42	356,926.51
1907.....	94,066.16	75,761.81	.....	230,187.59	42,276.61	442,292.17
1908.....	96,319.70	112,393.88	$15,083.22	197,141.83	35,020.14	455,958.77
1909.....	121,005.59	90,900.55	15,506.38	167,080.79	35,721.82	430,215.13
1910.....	116,593.71	99,853.73	16,814.12	203,854.62	44,777.96	481,894.14
1911.....	149,768.52	91,963.05	19,618.33	254,847.03	34,300.81	550,497.74
1912.....	128,824.09	129,129.86	19,311.45	241,114.90	32,266.56	550,646.86
1913.....	143,006.19	114,187.80	20,172.83	307,609.86	38,382.71	623,359.39
1914.....	137,386.82	95,172.04	21,758.44	300,146.12	37,912.64	592,376.06
Total	2,326,597.73	1,444,608.92	128,264.77	3,856,547.41	783,413.05	8,539,431.88

EXHIBIT C. Continued.—*Income account for the period February 26, 1893, to June 30, 1914.*

Fiscal year ended June 30—	Operating ratio (per cent).	Net revenue or deficit.	Railway tax accruals.	Total operating income or deficit.	Non-operating income.	Gross income or loss.
1893	101.50	[1] $162.21	.....	[1] $162.21	.....	[1] $162.21
1894	107.75	[1] 4,707.22	$2,245.23	[1] 6,952.45	.....	[1] 6,952.45
1895	97.79	4,275.84	2,669.27	1,606.57	.....	1,606.57
1896	111.44	[1] 16,225.29	4,870.60	[1] 21,095.89	$228.80	[1] 20,867.09
1897	84.69	45,162.11	5,685.82	39,476.29	221.55	39,697.84
1898	77.54	98,669.53	10,690.89	87,978.64	168.35	88,146.99
1899	81.54	87,174.88	11,809.41	75,365.47	8.00	75,373.47
1900	93.63	27,732.32	13,957.44	13,774.88	.....	13,774.88
1901	73.39	168,107.81	13,785.35	154,322.46	.....	154,322.46
1902	83.76	87,004.33	14,467.26	72,537.07	444.63	72,981.70
1903	88.17	59,411.95	12,873.64	46,538.31	395.69	46,934.00
1904	95.39	21,057.76	13,555.32	7,502.44	.....	7,502.44
1905	86.31	72,586.26	13,835.08	58,751.18	.....	58,751.18
1906	84.30	66,463.18	16,500.00	49,963.18	.....	49,963.18
1907	84.76	79,524.72	13,200.00	66,324.72	.....	66,324.72
1908	112.16	[1] 49,361.75	15,168.32	[1] 64,530.07	.....	[1] 64,530.07
1909	84.37	79,699.44	15,162.51	64,536.93	.....	64,536.93
1910	86.06	78,083.25	15,830.31	62,252.94	.....	62,252.94
1911	91.16	53,381.14	16,092.71	37,288.43	.....	37,288.43
1912	81.76	122,819.90	19,150.14	103,669.76	.....	103,669.76
1913	77.17	184,344.18	18,934.12	165,410.06	28.62	165,438.68
1914	81.46	134,824.79	23,883.78	110,941.00	8.58	110,949.59
Total	85.92	1,399,866.92	274,367.20	1,125,499.72	1,504.22	1,127,003.94

[1] Deficit or loss.

EXHIBIT C. Continued.—*Income account for the period February 26, 1893, to June 30, 1914.*

Fiscal year ended June 30—	Hire of equipment debit balance.	Joint facility lines.	Interest on funded debt.	Interest on unfunded debt.	Total deductions from gross income.	Net income or loss.
1893	.....	.....	.....	.....	.....	[1] $162.21
1894	.....	.....	$41,866.45	.....	$41,866.45	[1] 48,818.90
1895	.....	.....	45,000.00	.....	45,000.00	[1] 43,393.43
1896	.....	.....	45,000.00	.....	45,000.00	[1] 65,867.09
1897	.....	.....	45,000.00	.....	45,000.00	[1] 5,302.16
1898	.....	.....	45,000.00	.....	45,000.00	43,146.99
1899	.....	.....	45,000.00	.....	45,000.00	30,373.47
1900	.....	.....	45,000.00	$75.68	45,075.68	[1] 31,300.80
1901	.....	.....	45,000.00	136.80	45,136.80	109,185.66
1902	.....	.....	45,000.00	.....	45,000.00	27,981.70
1903	.....	.....	45,000.00	.....	45,000.00	1,934.00
1904	.....	.....	45,000.00	.....	45,000.00	[1] 37,497.56
1905	.....	.....	45,000.00	.....	45,000.00	13,751.18
1906	.....	.....	45,000.00	.....	45,000.00	4,963.18
1907	.....	.....	45,000.00	.....	45,000.00	21,324.72
1908	$5,839.69	$9,480.71	45,000.00	.....	60,320.40	[1] 124,850.47
1909	15,318.07	12,993.62	77,083.26	861.80	106,256.75	[1] 41,719.82
1910	27,666.60	17,422.41	80,000.08	.....	125,089.09	[1] 62,836.15
1911	38,917.72	16,847.07	79,999.92	279.17	136,043.88	[1] 98,755.45
1912	41,947.80	16,715.19	80,000.00	663.89	139,326.88	[1] 35,657.12
1913	49,547.12	20,499.09	80,000.00	387.68	150,433.89	15,004.79
1914	58,586.11	22,155.75	80,000.00	752.77	161,494.63	[1] 50,545.04
Total	237,823.11	116,113.84	1,148,949.71	3,157.79	1,506,044.45	379,040.51

[1] Deficit or loss.

Statement of Methods.

In making valuations of steam railroads the entire country was divided into five districts, each containing approximately 50,000 miles of railway. This division was generally a territorial one by state lines, but an entire railway system has been usually asssigned to one district, even though it extended into the territory of another district. Thus, the Northern Pacific Railway was assigned to the Pacific district, although it ran through the states of three districts.

The work itself was divided, according to its character, into three sections or classes—engineering, land, and accounting. These titles sufficiently indicate the general nature of the work of the several sections.

The Commission created for the prosecution of this task a bureau of valuation, the overhead organization of which is as follows:

1. A director, having general charge of all branches.

2. An advisory board, whose duty it is to consider questions arising in the institution and prosecution of the work with a view to advising the director and the commission.

3. A solicitor, having charge of the law matters peculiar to valuation under the chief counsel of the Commission; and, in each district, a valuation attorney, who also has general charge of land matters in the district.

4. An engineer, in charge of the engineering work in each district. These five engineers together make up what is known as the engineering board, which confers upon all engineering matters and recommends as a board to the director the methods and regulations which are to be followed as to engineering matters.

5. A supervisor of land appraisals, having general jurisdiction over all matters relating to lands.

Under him as to land in each district is the valuation attorney, having immediate charge of land matters in that district.

6. A supervisor of accounts, having general supervision of this subject.

263 A district accountant, acting under the direction of the supervisor of accounts, is in immediate control of matters of accounting in each district.

Some further reference to the working organization will be made in developing the methods employed.

The Engineering Section.

The valuation act requires the Commission to show, among other things, the cost of reproduction new and the cost of reproduction less depreciation of the property owned or used for common-carrier purposes. The work of the engineering section covers these two items except as to lands.

The act also requires that the Commission shall prepare an inventory of the entire property of every common carrier subject to the provisions of the act. The property of a railroad company usually embraces, in addition to its property which is used for common-carrier purposes, other property not so used. All this property must be listed by the Commission in its general inventory, but only that portion of it which is used by the carrier for its operative purposes is dealt with by the engineering section. The inventory which is treated of here includes, therefore, only operative property.

The Engineering Inventory.

An inventory like that called for by the act may be produced in two ways:

1. The Commission may require the carrier to file an inventory of its property and may check that inventory when filed.

2. It may make the inventory itself, calling upon the carrier for such information and assistance as may be needed.

An examination of the valuation act makes it clear that Congress intended to provide for the investigation and marshaling of every fact which can bear upon the value of the property of the carriers. The basis of all that information is the inventory or list of the physical property of the carrier. The act provides that the Commission shall from time to time revise and correct the valuations which it makes. It has been felt, therefore, that such an inventory should be prepared as will put beyond cavil the physical property which the carrier possessed at the date of such inventory, and that this inventory should be kept current to a like degree so long as may be necessary. The inventory presented must have been so prepared that it will command the confidence of all parties. That kind of an inventory is of underlying and permanent value; no other inventory can be final.

264 An inventory of this character can only be prepared after an inspection of the property. Some representative of the Commission must either see the property which is included or must ascertain such facts as demonstrate the existence of that property to a reasonable certainty. If an inventory is filed by the carrier, it must be checked by the Commission to this degree of certainty, and this would mean that the work of filing the inventory would be duplicated by the work of subsequently checking the same inventory. It was felt that the total expense of preparing the inventory would be less if made by the Commission in the first instance with such assistance from the carrier as could properly be called for and granted. This method avoids the duplication of effort and secures an inventory which can be vouched for by the Commission and which also reflects the claims of the carrier itself, at the least total outlay by which a result of that character could be obtained.

Engineering Field Forces.

In following out the above method it has been found expedient to divide the engineering field force into different branches.

The road-and-track party measures and inventories the roadway and all structures connected therewith except bridges of over 12 feet in length, and buildings. This party measures the actual length of the road. The entire roadbed is cross sectioned for the purpose of determining and classifying the quantities of material which were moved in its construction. Ties in two 600-foot sections of each mile are counted and the kind observed. It is assumed that these sections fairly represent the entire mile and tests made by checking the result thus obtained against a precise count of every tie show that the plan produces a substantially accurate result.

The amount of ballast is determined by field measurement. Where subsidence occurs this also is measured, so far as possible, by borings, cross-section ditches, etc.

The records of the carrier are observed and availed of in so far as they seem to indicate in a reliable way actual quantities.

The bridge branch deals with bridges over 12-foot span.

The building branch takes all buildings and similar structures, like water and fuel stations.

The signal branch handles interlocking plants and signals of all kinds.

In case of a very simple property the roadway-and-track party inventories bridges and buildings along with the roadway, thus avoiding the necessity of sending an additonal party over the line,
but experience shows that where properties are at all com-
265 plicated the work can be more expeditiously, more satisfactorily, and more cheaply done by the several branches acting independently.

The mechanical branch deals with equipment of all kinds and with shop tools and machinery. Generally electrical appliances are comparatively simple and are handled by the mechanical branch, but in the eastern district, where many electrical installations are extensive and complicated, a separate branch has been established.

Co-operation.

The act requires carriers to furnish maps, profiles, plans and other information of this sort as required by the Commission. It also enjoins upon carriers co-operation in the entire work. It has been the effort of the Commission to so prosecute its labors as to secure from the carrier a large measure of co-operation, and to this endeavor carriers as a rule have generously responded.

The Commission has required the carriers to prepare maps and profiles of their road in specified form. It was at first provided that these maps and profiles should be filed with the Commission either by depositing with it the original tracing or some mechanical

reproduction of that tracing which would be equally distinct and durable. This was upon the theory that the Commission ought to have in its files such maps, but experience has shown that the interest of the public will be equally well served if the carrier prepares and preserves these maps in some secure manner, furnishing to the government blue-print copies whenever required. This relieves the carriers from what they have considered a burden without detriment to the undertaking of the Commission.

It has been believed that one of the results which will follow this valuation work is that the carriers will hereafter keep their engineering and other records in proper form. This has not been done by all carriers in the past, and the present seems to be a favorable opportunity for the prescribing of proper standards and the adoption of rules which will require the observance of those standards. The Commission has, however, been extremely solicitous not to require the carriers to furnish anything which would not be of permanent value unless absolutely essential.

In addition to the above maps and profiles, carriers have been required to furnish for the benefit of the engineering section whatever plans they might have of buildings, bridges, signal interlockers, etc. They have not been required up to the present time to construct new plans when there were none in existence. They have also been required to file schedules of their equipment and a list of their industry tracks.

266 The Commission has also requested carriers to co-operate by furnishing certain engineers detailed to operate in the field with the engineers of the government, and as a rule these requests have been acceded to by the carriers. A representative of the carrier, ordinarily known as a pilot, accompanies each road-and-track party. This person is an engineer of experience and ability whose duty it is to point out the property to be inventoried and to see that it is properly measured, inventoried, and classified. Before beginning work he prepares himself by a careful examination of the records of the carrier, by going over the property in advance, and by conferring with others.

The bridge party consists of two engineers, one furnished by the Commission and in charge of the party, the other furnished by the carrier. The building party is of the same size and is made up in the same way. It sometimes happens that additional men are associated with these parties for the purpose of assisting in taking measurements, etc., and these are sometimes furnished by the Commission and sometimes by the carrier.

The mechanical party also consists of two engineers, one supplied by the Commission, the other by the carrier. In all cases the Commission engineer is in charge of the party, but the two men are usually of about the same grade and qualification and freely consult each other.

Carbon copies of all field notes are furnished to the representative of the carrier, who signs the same as evidence that they have been correctly taken, so far as his observation goes. If the representa-

tive of the carrier dissents upon any point, such dissent is minuted upon the notes themselves at the time.

It is generally agreed between the bureau and the carrier that such notes shall be taken as correct, unless altered by the Commission upon notice to the carrier or unless objection is filed by the carrier within a limited time.

It will be seen, therefore, that this inventory is really the joint product of the carrier and the bureau, or, at all events, that the Commission's valuation forces have fully considered everything which the carrier desires to point out or to say in the completion of the inventory. It is believed that under the plan adopted all unnecessary duplication of effort has been avoided and that a more accurate inventory is produced than would otherwise be obtained.

Thus far there has been almost no complaint of omission upon the part of the carrier and comparatively little dispute as to quantities. What dispute has arisen has been as to matters of principle rather than of observation or computation.

267 Form of Inventory.

The valuation act requires an inventory in detail of each piece of property of the carrier. Since this requirement would be impossible of performance if construed narrowly, a practical solution must be sought. What is "each piece of property" within the meaning of the act, how shall that property be enumerated, and what units shall be employed?

Since, in estimating cost of reproduction new, it will be necessary to apply to these units when assembled a price, it seems to follow that those units should be employed which are current in the purchase and sale of the property under consideration or are commonly used in construction contracts and settlements.

Ties, for example, are bought and sold by the piece; therefore, the single tie is the unit. The price varies according to the kind and size of tie, therefore, within reasonable limits ties should be thrown into classes.

Rails are bought and sold by the gross ton. This is therefore taken as the unit.

Track fastenings are usually purchased by the net ton and this is the unit for that commondity.

With equipment the single car or engine is the unit, but these units when of the same series are thrown into groups exactly as are ties or tons of rail.

Bridges and buildings present a more doubtful case. It has been finally decided to report separately bridges of over 12-foot span. All under that are grouped. In reporting the individual bridge a brief description is given, and the superstructure and substructure are generally reported separately. When the substructure can be divided the masonry is treated as a separate item, other items being grouped.

Buildings of considerable cost are reported by individual structures, the different parts of the structure being specified. The cost

of foundations, platforms, buildings, are each shown separately, and frequently the heating and lighting plants are also priced as a separate item.

It is believed that this detail is sufficient to enable the one who examines the report to form a fairly accurate judgment of the character and condition of the property, which might not be conveyed by a mere statement of reproduction cost or reproduction less depreciation.

The act requires that the physical property shall as nearly as practicable be classified in conformity with the classification of
268 expenditures for road and equipment as prescribed by the Commission. The classification of the Commission now names 62 primary investment accounts, and using the units as above indicated the property of the carrier is grouped into these different accounts. For example, all items of expenditure which would be charged under Account 3 if the road were to be constructed at the present time are grouped together as grading, and so on for the other accounts. This classification is observed in all the reproduction estimates of the Commission.

Valuation Sections.

The inventory is prepared and the foregoing facts are shown by what are denominated "valuation sections." A valuation section is a particular portion of the road designated by termini and treated as one piece of property; that is, all the grading, bridges, rails, etc., upon that valuation section are inventoried separately from the balance of the property of the carrier.

The reasons for the establishment of a particular valuation section are various.

(*a*) Ordinarily, property is inventoried to the owner. It may happen that in the building up of a railroad system some short line has been taken in by purchase, consolidation, or otherwise. The history of this line will be developed in our accounting work, and it is frequently desirable to know the original cost to date and the reproduction costs of this particular piece of road. For this reason it is treated as a valuation section.

(*b*) One carrier frequently gives to another carrier trackage rights over a portion of its line. When this part is considerable it is made a valuation section, so that it may be inventoried by itself.

(*c*) It frequently happens that the cost of construction varies upon different parts of a railroad, and this is almost always the case where that railroad is of considerable extent. One purpose of the valuation section is to put together those parts of the railroad where the construction cost is approximately the same and where the same unit price may therefore be applied.

(*d*) It is always desirable when possible to compare original cost with cost of reproduction. It frequently happens that the cost of constructing a particular section of a railroad is known, while the original cost of the portion upon either side may be unknown. In

such case that portion of which the original cost could be identified would be made a valuation section.

(e) The act requires that the various costs and values shall be stated by states. This makes it necessary to observe under all circumstances state lines in the establishments of these valuation sections.

269 (f) Some states have valued their railroads, and in so doing have created valuation sections of their own. It has been the policy of this Commission to observe those sections in so far as practicable.

The act requires the Commission to report its valuations separately by states, and valuation sections are finally summarized according to that requirement. The manner in which and the extent to which property has been allocated by states will be referred to later in this discussion.

Substance of the Inventory.

The engineering inventory contains only property which is used by the carrier for its purposes as a common carrier. Noncarrier property in the nature of real estate appears in the report of the land section. Stocks, bonds, and other property of that character, together with noncarrier physical property other than land, appear in the accounting report. The engineering inventory enumerates all the operative physical property of the carrier which is now in existence, except land, and embraces nothing which is not in existence. If, for example, in improving the alignment of the roadway a portion of the original embankment has been abandoned, the abandoned part is not inventoried.

Present topographical conditions are assumed to exist, except as they have been altered by the construction of the railroad itself, and it is further assumed that the general condition of the country as to forest, tillage land, drainage, etc., is that of valuation date.

The estimate of reproduction cost arrived at in this manner does not correspond with the original cost of producing the property as it was in fact produced. The present railroads of this country are the product of a process of gradual development. The narrow gauge road has passed into the standard gauge, the low class into the high class, the single track into the double track. Grades have been improved, curves eliminated. In the estimate of reproduction all this is disregarded, and it is assumed that the existing property is reproduced by a single continuous impulse.

The railroad embankment is to an extent continually being dissipated. A portion of it is blown away, another portion is washed away. The parts dissipated are sometimes restored and more, and sometimes not. No account is made of the yards of grading which may have gone into the embankment unless they are found there upon the date of valuation.

Construction off the right of way, and perhaps upon land not owned by the carrier, is included, provided the structure is essential to the existence and operation of the railroad and would be to-d

reproduced if the railroad itself were to be rebuilt. Thus a
270 drainage ditch might be included in the cost of reproduction if the character of the country is such that the maintenance of the ditch is necessary, but would not be embraced if it were no longer maintained as an essential part of the property.

It often happens that in the construction of a railroad the location of a public highway has been changed. Nothing is included in the reproduction estimate for the making of this change. Allowance is made for whatever structure has been provided by the carrier for the crossing of the highway, whether that structure is on or off the right of way, but it is assumed that the location of the highway would be as it now exists.

The foregoing paragraph applies in case of a highway crossing which has been constructed by the carrier. It frequently happens that highway crossings at grade are eliminated by providing an undergrade or overgrade highway. This may be by state statute or municipal ordinance, and it sometimes happens that the state or the municipality, or in some instances both, contribute to the cost of eliminating the crossing. In such case the carrier under the accounting rules of the Commission carries for the most part into Account 15, crossings and signs, the amount which it has in fact expended in the elimination of the grade crossing. In showing cost of reproduction it is assumed that the present undergrade or overgrade crossing would be reproduced as it was produced, and when those portions of the work which were involved in the elimination of the crossing can be clearly distinguished from the rest of the railroad, there is shown in our reproduction estimate under Account 15 the amount paid by the carrier.

It sometimes happens that quantities can not be identified so as properly to comply with the above rule, and in such cases the actual quantities which are found at the present time upon the carrier's right of way are placed and priced in the engineering inventory. If the carrier conceives that it is entitled as part of its reproduction cost to anything in addition to this, it can file its claim, which will be disposed of as justice seems to require in each individual instance.

In the construction of a new railroad it would probably be necessary to move buildings. No account is made of this in the engineering inventory.

It is said with truth that items of the two kinds last mentioned do almost invariably occur in the building of a railroad, and it is urged that if they be omitted from the estimate of reproduction cost that estimate does not fairly represent the cost of reproducing the property. The Commission is required to show the cost of reproduction new. This is not the cost of reproducing the property as it was produced, and no attempt is made to show that cost except as it
271 appears in original cost. What expenses the carrier may have incurred for the moving of buildings and the changing of highways are always matters of more or less doubt. Assuming for the moment that these items should be added to reproduction cost for any purpose, it has seemed the better course to allow the

carrier to present its claim for such items and to substantiate that claim by proper reference to its records or by such other evidence as may be available. Engineers in the field can not properly deal with such evidence; it is their function to observe and report upon what is now in existence.

It should also be noted that some items, particularly clearing and grubbing, will differ materially from the original units of the same kind. The forest has become tillage lands since the road was originally built, and in some cases tillage land has become forest. The amount of clearing and grubbing in the reproduction estimate is determined by reference to the present character of adjoining lands and not to the conditions which prevailed at the time of original construction. If the road were to be constructed where it now is through the country as it now exists, the clearing and grubbing necessary would be what is shown in our reproduction estimate. The value of the lands is determined, not upon the basis of its original condition, but with reference to its present condition, and there seems to be no reason why it should be assumed for the purpose of fixing value that a field is in tillage and for the purpose of clearing and grubbing that it is covered with stumps which must be removed and which would render it untillable.

To the rule that cost of reproduction will always be shown in kind there are some apparent exceptions.

It may have been thought necessary in the original construction of the road to bring material for a considerable distance in order to secure a proper foundation for the track. Since the construction of the property sources of supply have been developed from which material of substantially the same kind, although not identical, might be obtained at a much less expense. In such case the engineering inventory would enumerate material of the general kind which is found in the track, but the price would contemplate the obtaining of that material from the less expensive source of supply and not from the original source.

It often happens that the track was at first supported upon a timber trestle which later was filled. The existing structure is an embankment, which contains upon the inside the original trestle. In the inventorying of the property this is measured, computed, and priced as though it was simply an embankment, no reference whatever being made to the trestle. In applying the price the engineer inquires whether approved construction would require the
272 erection of a temporary trestle from which the embankment would be built, or whether the embankment should be constructed without the expense of such trestle, or so much of it as has not decayed. If good construction would require a temporary trestle, then proper allowance is made for the same; otherwise the price is determined as though no trestle had ever existed.

The same rule would apply where, owing to climatic or other changes, a watercourse which existed when the road was constructed had dried up and disappeared. Originally that stream was crossed by a trestle or possibly a bridge, but when the necessity for this no longer existed the bridge or trestle was filled, presenting today a

continuous embankment. In this case present topographical conditions are assumed, and nothing is included for the bridge necessary in the first building of the road.

It may sometimes happen that an abutment was originally constructed of stone which was brought from a long distance. Today concrete would be provided at a very much less price than stone. Ordinarily the reproduction is in kind, and the cost of stone is used even though concrete might today be somewhat more economical, but this rule would not necessarily be followed in extreme cases.

Shrink and Swell.

When earth is taken from a cut and deposited in an embankment the number of cubic yards in the embankment at first exceeds those in the cut. The amount of this excess will depend upon the weather during the progress of the work and upon the manner in which the work itself was done. If the earth has been moved with teams and scrapers or carts, the embankment is more compacted than when filled from a trestle. As times goes on this embankment shrinks and compacts, especially under the influence of operation, so that the number of cubic yards in the embankment is less than of those in the excavation which produced the embankment.

Rock, although shrinking somewhat after initial placement, will show a net swell. Solid rock blasted and placed in an embankment swells from 35 per cent to 70 per cent. Even loose rock produces an embankment considerably in excess of the excavation. Subsequently to being placed in the fill, rock shrinks, and this is taken into account in determining the net swell.

It is assumed that shrinkage will be complete at the end of five years. The amount of shrinkage in an earth embankment of that age varies with the character of the soil, but is found to be upon the average about 10 per cent, and approximately that allowance is made.

The net swell of rock will vary from 15 per cent to 60 per
273 cent, depending upon conditions, and no general rule can be laid down. If the embankment is less than 5 years old the engineer considers this in applying shrink and swell.

Pay Quantities.

This does not, however, necessarily mean that the pay quantities stated in the inventory are 10 per cent in addition to what those quantities would be if the actual measurements were used. The effect which this shrink or swell may produce upon the pay quantities depends upon the method which is adopted in the stating and pricing of grading. Two methods are used, known, respectively, as the two-way method and the one-way method. Different unit prices are applied to the grading quantities reported, dependent upon whether the one-way or two-way method is used as the basis for determining the quantities stated. Which method is used in a particular case depends upon the character of the grading and the circumstances

under which it is assumed to be reproduced, and is deemed to reflect sound practice.

Two-way method.—Under the two-way method quantities of both excavation and embankment are paid for. The cut and the embankment are each separately measured, and the number of yards as they actually exist in cut or embankment are extended upon the assembly sheet as the number of units to be priced. Under this method the quantity as actually measured in the excavation would be shown; the embankment as actually measured in the field would be increased 10 per cent on account of shrink. This is upon the supposition that these quantities existed when the contractor had completed his work and the embankment was ready for track. It is assumed that those quantities would be measured and paid for, that the present embankment is 10 per cent less in size owing to shrinkage, and that therefore, in order to translate present measured quantities into pay quantities under our reproduction estimate, this allowance for shrinkage should be made. No addition is made for either shrink or swell under this method in case of rock embankment.

In saying as above that the excavation is measured and actual quantities are shown, it must be understood that this is upon the assumption that the cut as it exists today fairly represents the cut which in good construction would have been produced in the building of a new railroad of this type or kind. It frequently happens that subsequent to the original construction cuts have been widened by the removal of earth for maintenance purposes. This earth takes the place of what has been dissipated by the operation of the road, the replacement of which is a proper maintenance charge and
274 which ought not to be included in reproduction quantities since it is no longer in existence.

It should further be noted that the fresh cut from the first begins to run down into the ditches, which must be kept open by removing this earth. This process also results in the gradual widening of the cut and also perhaps of the embankment, since the earth taken from the ditches is put upon the embankment.

The tendency of all this is to produce a quantity of excavation and sometimes of embankment which ought not properly to be paid for in a reproduction estimate. Ordinarily no account is made of all this, the cut and embankment being measured as they exist, but it sometimes happens that the borrow has been so extensive that our engineers do not measure the cut as it exists today, but rather the cut as it would exist in producing a new road of this type.

One-way method.—Under the one-way method only quantities of excavation are measured and paid for. The theory is that the contractor must place the earth taken from the excavation at whatever point the engineer of the carrier directs. If, therefore, the quantity of cut exactly equaled that of embankment the total pay quantities would be ascertained by measuring the cut, and would be just one-half the quantities stated under the two-way method.

In point of fact, however, the fill frequently exceeds the cut, so that it is necessary to obtain the additional amount of material required by borrowing. When the road is under actual construction

and the borrow pit is new, it is usually possible to measure the amount borrowed, and in that event the cut (unless wasted) plus the borrow would equal the pay quantities.

With an old road it is impossible as a rule to measure with accuracy the borrow pit, which for various reasons and in various ways has been substantially obliterated, or, if not obliterated, so changed since the period of original construction that any measurement of the quantities then borrowed is impossible.

In order, therefore, to obtain the amount of borrow, it is necessary to measure both the cut and the embankment. By substracting the cubic yards in the cut from the cubic yards in the embankment the quantity of borrow is ascertained. It is evident that in making this computation for the purpose of ascertaining the quantities required to reproduce the property, the present compacted embankment must be increased by the amount of shrinkage and decreased by amount of swell.

It is furthermore evident that while the quantity of excavation might be sufficient to construct the embankment, nevertheless the location would be such as to render the haul of the material from the excavation to the point at which it is needed for embankment
275 an unduly expensive one. It is frequently cheaper to throw away or "waste" what comes from the excavation and borrow material from nearer sources. Contracts for grading usually provide that the contractor shall place the excavated material as required up to a certain limit, and that if he is required to haul it beyond that limit he shall be paid for this service. This free-haul limit runs all the way from 100 feet to 1,500 feet in actual contracts. The most usual free haul is 500 feet.

It will be clearly apparent, therefore, that the pay quantities determined in this way do not exceed actual quantities as measured in the fill by 10 per cent or by any other per cent and perhaps not at all. Shrinkage is allowed for and swell is also allowed for, but the actual pay quantities may not be affected by either shrink or swell.

Industry Tracks.

Industry tracks are those connecting the line of the carrier with an industry and which are exclusively used for the purpose of the industry or in which the industry has a preferential use. The carriers claim that all such tracks over which their locomotives pass in receiving and delivering traffic to and from the industry should be embraced in the inventory as property used by them for transportation purposes. The Commission has not accepted this view, but believes that the circumstances under which the track was constructed and is now held and used should determine.

It often happens that a carrier constructs at its own expense a track connecting its line with an industry for the sole purpose of handling the traffic of that industry. Such track is clearly a part of the operative property of the carrier and is inventoried to it as such.

An industry frequently constructs entirely at its own expense a track from its industry to the line of the carrier. Section 1 of the act

to regulate commerce requires the carrier to make and operate a switch connection with such a track and to furnish cars for it when the connection is made. Such a track is in no sense a part of the property of the carrier. The carrier neither built nor contributed to its construction. It has nothing to do with its maintenance. The mere fact that its locomotives may pass over the track in receiving and delivering traffic from and to the industry does not make it a piece of property used by the carrier for its purposes as a common carrier. No part of such a track would be inventoried to the carrier.

The great majority of industry tracks lie midway between these two extremes. They are constructed and maintained under a variety of contracts and with varying conditions. As a rule the carrier owns the rail, track fastenings, ties, and, generally speaking, the removable part of the track. The industry owns the land,
276 which reverts to it upon the termination of the use. Sometimes the carrier contributes to the expense of building the track, but usually the industry is required to pay for those portions of the track which finally become the property of the carrier. Such a track is provided primarily for the benefit of the industry. It is generally used exclusively for the purpose of the industry. It is in fact a plant facility, its purpose being to enable the industry to receive from and deliver to the carrier its traffic without the expense of drayage from or to some sidetrack or depot. It occasionally happens that the carrier uses this incidentally for its own purposes when not required by the industry, but while such provisions in the contract are frequent the actual use under those provisions is infrequent.

The rule adopted in the inventorying of such tracks is to give to the carrier whatever property of a removable character it could take up and carry away if the use of the track were to be discontinued, provided under the terms of the contract the carrier owns this property, even though it were originally paid for by the industry.

Where the title to the lands reverts to the industry upon the cessation of the use, the reproduction estimate shows the grading and other permanent structures connected with the land, provided the carrier bore the expense of the same; otherwise not.

This rule gives to the carrier all or more than it can claim under the literal interpretation of the act. If cost of reproduction new or cost of reproduction less depreciation should be made the basis of value, the carrier would under this method of procedure add to its value large sums which it has received from the public, not as a voluntary donation but by a virtual assessment *in invitum*, since in most instances in the past the industry could obtain the sidetrack only by complying with the carriers' terms.

To Whom Carrier Property is Inventoried.

Ordinarily carrier property is inventoried in the name of the owner; that is, the details are shown in the inventory of the owner and not elsewhere. In case of jointly owned property the details would appear in the inventory of each owner.

Where property is owned by one carrier and exclusively used by

another carrier the details would appear in the inventory of the owner, but the total amount would be shown in the inventory of the user as property used by that carrier. To illustrate: The Boston & Lowell leases its property to the Boston & Maine. The details of that portion of the Boston & Maine system which is leased from the Boston & Lowell would appear in the Boston & Lowell inventory, but in the inventory of the Boston & Maine the cost of reproducing this property would appear in the used column. The
277 Boston & Lowell inventory would ordinarily be bound up with and treated as a part of the inventory of the Boston & Maine system. All other properties making up that system would receive the same treatment.

It may sometimes happen that the details of a property will be given in the inventory of the user only, the amount being stated in the inventory of the owner, but such an instance, if it occurs, will be especially noted in the inventory itself.

It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. Where such an arrangement exists as to property which is of sufficient value to be of significance, the portion in which trackage or similar rights are granted is inventoried by itself and the fact and nature of the use described in the inventories both of the owner and the user.

This will be made clearer by an illustration. The trains of the Texas Midland Railroad run from Paris upon the north to Ennis upon the south. Beginning at Paris the first 37 miles of line are owned by the Texas Midland; the next 14 miles between Commerce and Greenville are owned by the St. Louis Southwestern Railway Company of Texas, commonly known as the Cotton Belt; the remaining 74 miles are the property of the Texas Midland. It will be seen, therefore, that the use of this portion of the line between Greenville and Commerce makes up a part of the through line of the Texas Midland from Paris to Ennis.

The portion between Greenville and Commerce is made a valuation section upon the Cotton Belt and the various costs are determined with respect to that valuation section and reported in detail in the inventory of the Cotton Belt. The inventory of the Texas Midland shows the fact of this use and the valuation report upon the Texas Midland gives the terms and conditions of that use. The cost of reproducing this valuation section is not, however, carried into the used column of the Texas Midland.

The reason for this is obvious. If this reproduction cost appears in the used column of the Cotton Belt and again in the used column of the Texas Midland, the cost has been duplicated. It has been the desire of the Commission to appraise all the carrier property operated by carriers subject to its jurisdiction, but to report that property but once. When the used column of all carriers covered by this appraisal is totaled, it should give the total reproduction costs of all common-carrier property in the United States without duplica-

tion. This can not be done if the claim of the carriers that
278 all property over which a particular carrier operates shall be included as used both by the owner and by the user.

It is believed that the method adopted fully complies with the statute. For example, the portion of the Cotton Belt, above referred to, is inventoried. The fact of its use is referred to both in the inventory of the Cotton Belt and in the inventory of the Texas Midland. The conditions under which the use exists are set forth in detail both in the report upon the Cotton Belt and in that upon the Texas Midland. When in the valuation of these properties it becomes essential to know the cost of reproduction new or of reproduction less depreciation, the facts can be ascertained by reference to these reports; and the same of original cost if that can be shown. The physical property is not changed by this dual use. It can exist but once. If a part of the cost of that property is to be credited to the Texas Midland by virtue of the fact that it operates its trains over it, a corresponding portion should be deducted from the cost of the Cotton Belt. This property is used but once for the benefit of the public and ought not to be reported as twice used.

While the foregoing is true as to all pieces of property which are significant in character, there are many instances of small and comparatively insignificant items of railroad property which are used under lease with the owner which are not separately inventoried to the owner, and which could not be distinguished in the same manner as could these 14 miles. For example, the Texas Midland uses the passenger station of the St. Louis & San Francisco at Paris. That station is carried as a separate item in the inventory of the St. Louis & San Francisco and could be identified if desired. In reaching the station the tracks of the St. Louis & San Francisco are use by the Texas Midland to a limited extent. These tracks are not embraced in the inventory of the station, and the portion of the track which is used by the Texas Midland in entering the station is not inventoried separately from the other tracks of the St. Louis & San Francisco at that point. This had not been done, because it would involve an immense amount of labor without any corresponding beneficial result.

A carrier may lease for its city ticket office a room in a building belonging to some private party and used mostly for private purposes. That room, however, is used by the carrier for its purposes as a common carrier. It can scarcely be claimed that it is the duty of the Commission to attempt to segregate that room from the balance of the building and show with respect to it the various costs. And this would be true if the building were entirely owned by some other common carrier which used the balance of it for common-
carrier purposes, in which event the entire building would be
279 inventoried to the owner. This act must receive a sensible and practical interpretation.

These trackage rights, while often of great importance, run into most minute uses. A few feet are frequently involved. Sometimes the use will be occasional, but once a week, or even once a year. To say that the Commission must seek out every instance of that kind, make each of these pieces of track a valuation section, distinguish

between those pieces which are used by one carrier in common with the owner, or by several carriers in common with the owner, would be to impose a most intolerable burden and to confuse beyond reason the reports themselves without practical benefit.

Depreciation.

As treated by the Commission, depreciation may be defined as the lessening in cost value due to the smaller number of service units in the property as found, than in the same property new. An article when new contains, so to speak, a certain number of units of service; as those units are exhausted the article depreciates. When they are all used up the service life ends.

It is assumed that the loss of these units of service is evenly distributed throughout the entire life of the article. In point of fact this is not exactly true. Some articles may depreciate more rapidly in the early years of service and others in the last years, but the practical way is to assume that the loss is uniform, and it is believed that this as applied generally will produce a fair result.

The extent of depreciation is expressed in condition per cent stated as a fraction, of which the denominator expresses the total service units while the numerator gives those remaining. Thus, 80/100 means that of 100 units of service 20 have been exhausted, while 80 remain. Ordinarily this fraction would be obtained by using total life for the denominator and remaining life for the numerator, but in some cases the fraction only expresses the relation between service units new and the service units at the date of valuation.

It sometimes happens that an article may be used for certain purposes so long as it is fit for those purposes and afterwards put to some other use. In such case the article is depreciated with reference to the purpose for which it is being used. For example, rail is divided into two general classes, new and relay. It is bought and sold under these terms. New rail is generally laid in the main line where the use is most exacting. When in process of time it becomes unsuited to the more exacting conditions of that place, it is removed and put into a sidetrack or branch line, or perhaps into the main line of a logging road or some other railroad for which it may suffice. In ascertaining the depreciation of rail new, rail is depreciated
280 down to relay; that is, we inquire how long before this rail which was laid as new must be taken up and put elsewhere as relay, and this period is treated as the total life of the new rail. If the relay rail is placed in the sidetrack the inquiry is how long it will last in that place. If the sidetrack had been in fact laid with new rail, the inquiry would still be the same; namely, What is the life of new rail in a sidetrack? The life of the new rail in the sidetrack would, of course, be longer than that of the relay rail. In applying this fraction, which states condition per cent for the purpose of obtaining in dollars the cost of reproduction less depreciation, account is made of salvage or scrap. By salvage is meant the value of the article for some use other than that to which it has been devoted, while scrap designates the junk value; that is, its value if broken up. In

making the computation salvage or scrap is first deducted, the remainder is depreciated, and the salvage or scrap then added to the depreciated cost. Thus, if an article when new costs $100 and the scrap is worth $10 and condition per cent 50/100, $10 would be subtracted from $100, $90 depreciated, and the $10 added to the depreciated cost, giving as cost less depreciation $55.

In applying the above principles it is necessary to determine total life and future life. The date of installation or of the beginning of the use is usually known, and if total life can also be fixed, future life may be obtained by subtracting the one from the other.

Ordinarily, therefore, the problem is to determine total life. This may be done by reference to the experience of the past. Where sufficient time has elapsed so that articles of the kind under investigation have in fact been worn out and displaced, the period for which they have been in service is known and life tables can be prepared. In determining total life, observation is of value. The amount of wear which has taken place in a given number of years can be noted and from this the total life can be calculated. The opinion of those who are qualified by their training and experience to form such opinion is also of service. From all sources an estimate of total life must be formed, and a great amount of study has been devoted to this, mainly in the way of collecting statistics from the experience of the past.

There are two kinds of depreciation, physical and functional. Physical depreciation is due to deterioration through age or wear. A piece of property will sometimes deteriorate as rapidly when standing idle as when in active service, while in other instances the deterioration is very slight unless in use. The real question always is what part of the physical life of this piece of property has gone, whether from the mere fact of age or from service.

281 Functional depreciation results from the want of adaptation to function. While in working condition, a machine for some reason can no longer perform the work required of it, and, therefore, although still physically fit, must go out of service. This may be because the machine is too small, or because some better process has been invented, or for various reasons which render its further use impossible or undesirable.

Functional depreciation has played a very important part in the past development of railroad property. The station has been replaced because it was too small and not because it had worn out. The steel bridge has been removed because it could no longer carry the heavier rolling stock which modern methods of operation have rendered imperative. Cars and engines have been discarded, not for the reason that further repairs could not be made, but rather because the type had become obsolete.

It will be seen, therefore, that if a mortality table be constructed entirely or mainly from the experience of the past, functional depreciation will perhaps exercise a more dominating influence than physical depreciation. But it is by no means certain that what has occurred in the past will be true of the future. It generally happens that in the earlier and formative stages of any industry changes take

place rapidly, whereas when time has indicated the best methods and types greater permanency occurs. It is hardly probable that functional depreciation will play the same part with the same articles in the future as in the past. The railroad builder of to-day will be more likely to supply in original construction or in reconstruction a bridge of sufficient capacity; the size of the locomotive will not so much increase, thereby rendering everything else too small, and even the type is likely to be more permanent. Upon the other hand, functional depreciation may be even more pronounced in some other direction. Electricity may supplant steam as a motive power, or some discovery may do away with both steam and electricity.

The Commission has found this matter of functional depreciation difficult to deal with for the foregoing reasons. The following course has in a general way been pursued:

As to the present, the engineers are instructed to consider functional depreciation which has already accrued. If the bridge is too light for the equipment being used and should be removed as soon as possible, that fact must be taken into account. If the station is too small to accommodate the traffic now flowing through it, that must be a controlling item in its depreciation. So of all other pieces of property. The depreciation has already taken place, the thing is no longer fit for its use and must be discarded. This being
282 so, it makes no difference whether the cause be physical or functional.

As for the future, the instruction is that functional depreciation shall only be considered when it is imminent. This word admits of no exact definition. If in the near future such depreciation is certain to occur, or reasonably certain to occur, it must be considered by the engineer. If, for example, the railroad has already begun to remove bridges of a similar type because they are too light, this fact must be considered. If, while the station may do for a few years to come, plans are already being considered for its replacement, the architect must not close his eyes to this circumstance and look only to the physical condition of the property. Generally speaking, in so far as functional depreciation can be accurately forecast, it must be considered, but speculation must not be resorted to.

In constructing a life table—that is, in determining the probable total life of a given class of articles—the experience of the past will be scrutinized in the same way. Of this the steel bridge furnishes a good illustration. It has been said that the average life of steel bridges in this country has not exceeded 30 years. This may be true; our studies would indicate that some comparatively short period would represent the active service life of that structure; but it is also perfectly evident that this has been due, not to the actual wearing out of the bridge, but to its inadequacy. It is further not apparent that the same cause will be operative to the same extent in the future.

Thirty years is not, therefore, used as the total life by which steel bridges are to be depreciated. There is no way in which a satisfactory total life can be fixed for a structure of this character, but the engineers have decided that, taking all things into account, 70

years will probably fairly represent that period; certainly it is sufficiently long for an average life, and this figure for total life is used in the depreciation of steel bridges.

It must not be understood, however, that this life is used in case of all bridges irrespective of what an inspection may show, but simply that it is taken as such life unless inspection demonstrates that some other period should be used.

The engineer examines a bridge which has been in service for five years. He finds it to have been well maintained and to be entirely adequate to the traffic. So far as observation reveals, this structure is as good as it ever was, and if the engineer were required to point out the particular in which the bridge has depreciated he would be unable to do so. Nevertheless, it is certain that those causes which will finally put an end to the useful life of this structure have been at work, and it is considered that they have reduced the life 5 of
283 the 70 years of its probable existence. The condition of this structure would therefore be 65/70. In reaching this conclusion the only part played by the inspection is to establish that observation of the property indicates nothing as to the extent of depreciation. In other words, the condition of the property is normal.

Let it now be assumed that the same kind of a structure which has been in place for 30 years is under inspection. Observation shows that this structure, either through lack of proper maintenance or due to its location or from some accident of its use, is badly corroded and otherwise worn. If the same rate of depreciation continues for another 10 years the structure must be replaced. In this case the engineer would reduce the probable life from 70 years to 40 years; the bridge would be three-fourths worn out and its condition per cent would be 25/100.

Upon the other hand, an observation of this structure might show that it had been perfectly maintained and at the end of 30 years was apparently as good as at the beginning. The engineer might feel that this bridge was likely to continue in service for more than another 40 years, and in that event he might increase the total life as a result of his inspection from 70 to 80 years. The condition in this event would be not 40/70 but 50/80.

This increase in the total service life would generally be made in the latter half of the period and not ordinarily in the first half, since with a structure like a steel bridge or a masonry pier evidence of depreciation would not be likely to occur in the early years of its service if that depreciation were merely normal.

With respect to certain kinds of property there is a further embarrassment in determining total life, arising out of the fact that certain kinds of property may be almost indefinitely continued in service by the making of proper repairs. Given a car of a satisfactory type and size, the different parts may be replaced as they wear out and the car itself thus perpetuated. Such a car goes out of service not because it is worn out beyond repair but rather because as a matter of policy it is not considered economical to continue it in use. The controlling depreciation here is functional rather than physical. While, however, the car itself may continue, the different parts wear out, and to them a definite life can be assigned. The trucks

have one life, the underframe another, the superstructure still another. In depreciating the car, therefore, each one of these parts is considered separately and given a condition per cent depending upon its age and condition. The whole is then combined into a weighted average and the condition per cent of the whole car stated.

284 This method of procedure is rather too favorable to the carrier, since it assumes that the life of the car goes on forever, whereas in point of fact this will not be true. When the car finally goes out of service there will still be remaining units of service in some of the parts. To offset this, the engineer is instructed to consider whether, in view of the type of car, the use to which it is being put, etc., the car ought reasonably to be continued in service indefinitely. If it ought to go out of service, that fact is considered. This is really the application of functional depreciation which has already occurred.

The same principle is applied to the depreciation of a building which may be renewed and improved even by the making of repairs. The architect ascertains not only the age of the building but what repairs have been made upon it and when made. These facts he combines with the knowledge obtained by an inspection of the structure.

From the foregoing it will be seen that the effort of the Commission is to state with respect to each piece of property the number of service units which that property now has for the purpose for which it is being used as compared with new. In determining that fact an inspection of the property is made and the experience of the past, both as developed by the records of the carrier under valuation and from that of other carriers as well, is considered in the light of present knowledge and conditions.

By each piece of property is not necessarily meant each unit, since several units of the same class may sometimes be combined and considered as one piece. Thus the ties or the rails of a given class upon one valuation section might be treated as a single piece of property in stating depreciation.

The depreciation of overhead charges will be considered in connection with the discussion of such charges themselves.

Attached as a note to this appendix is a memorandum from the engineering board stating briefly the principles and methods to be applied in depreciation and giving with respect to the several primary accounts the normal service life and other details peculiar to each account.

Appreciation.

As already noted in the discussion of depreciation, most items entering into the construction and operation of a railroad begin to depreciate or lose in value and capacity for service almost from the first. To this the item of grading forms a notable exception. From the outset nearly everything embraced in this primary account begins to improve, and if properly maintained the improvement may continue for a considerable time. This is sometimes known

285 as solidification and adaptation; in this discussion all forms

of physical appreciation in the property are included under the comprehensive term "Appreciation."

Upon the threshold of any discussion of this subject a clear conception must be formed of what appreciation is and how accomplished. This will be best understood by noting what happens when a new railroad is put into operation.

The sides of the fresh cut under the action of rain and snow, freezing and thawing, work down into the ditches, which must be cleaned out. As time goes on the sides of the cut gradually assume what is sometimes known as a natural slope. They also become covered with various kinds of vegetable life which tend to hold the earth in place. All this lessens the filling up of the ditches.

Substantially the same thing occurs with the embankment. The sides of the new dump are especially susceptible to the action of the elements. The shoulders slough off and gullies open in the sides. Fresh earth must be brought in to repair the damage thus done.

Soft spots develop in the embankment, and in order to maintain the alignment of the track additional ballast and sometimes earth must be applied.

It will be observed that the carrier in doing all this adds nothing to the form or substance of the property. It simply maintains the structure in the same shape that it was. The cut may sometimes change in form and the embankment, especially near the cut, may be somewhat widened. The slope of the embankment itself may be somewhat changed, but the purpose is to simply keep the property in its original state; in other words, to make good the change or depreciation which has taken place.

It often happens that under operation there will develop defects which must be remedied by additional construction. A tile drain is put in at this point, a ditch is opened at some other point, a retaining wall may be required. All these things, however, are betterments to the property, the cost of which may be properly included in the investment account. They are all in existence to-day and will be inventoried and included in the cost of reproduction.

Disregarding betterments for which the carrier receives account elsewhere, it should be carefully noted that nothing has been added to this property in the course of maintenance. The effect of maintenance is simply to keep up the structure. The appreciation which has occurred, the improvement in the property, is entirely a natural process. The earth has settled together under its own weight and by the pounding of the trains passing over it. It would have been possible to compact this embankment artificially, but that never was done; the compacting which has taken place and the
286 improvement in texture which has occurred is due to a natural process incident upon the passing of time. This must be kept clearly in view in all discussions of appreciation.

It should be noted, in the second place, that this appreciation under the accounting rules of the Commission is part of the operating expense and is chargeable as such. No part of that outgo can be included in the investment account of the carrier. The carrier

is entitled to pay out of its gross revenues operating expenses. It must charge as a part of those operating expenses a proper sum for depreciation of equipment, and it may charge some proper amount for depreciation of its road. What remains after the payment of operating expenses, depreciation, taxes, and similar items, belongs to the carrier. These expenses are just as much a part of maintenance as the renewal of the tie or the rail, only they are greater at first and less afterwards, while it is otherwise with the tie or the rail.

It may be still further noted in this connection that in estimating cost of reproduction work which was really done as a part of maintenance, and therefore paid for out of operating expenses, is almost certain to be included. As the sides of the cut run down into the ditches the cut itself grows wider; as this dirt is carried out onto the embankment, that also, especially in the vicinity of the cut, becomes wider. In determining the quantities for the purpose of a reproduction estimate, the cut is measured as it exists to-day, not as it did exist before operation began; that is, the portion which has been paid for out of operation is ordinarily included in the quantities to which a reproduction price is applied. To this extent the carrier gets the benefit of construction which was paid for not out of capital contributed by the owners of the property but out of operation.

The valuation act does not refer to appreciation. While the Commission is required to report cost of reproduction less depreciation, it is not required in terms to estimate appreciation. But the Supreme Court in the *Minnesota Rate Cases* has said that in showing value by the reproduction method appreciation, if it exists, should appear. It was the manifest purpose of Congress in passing the valuation act to marshal all those facts which might have a bearing upon the value of the property. Appreciation is such a fact, and the Commission would feel bound to report this added value if it could be ascertained upon any definite basis.

Engineers and commissions have often approved an allowance on account of solidification and adaptation. These allowances are not for the most part supported by reasons indicating how the result was reached. They were apparently off-hand estimates. They are not, of course, conclusive upon us. In other appraisals, nothing whatever was included on this account.

287 It seems to be generally conceded that the total cost of maintaining a railroad increases as time goes on, for a number of years at least. This is because certain items of expense do not occur in the first years of operation, which must be taken care of later. For example, the renewal of ties is a very large item of operating expense in case of most railroads, but only a few ties require renewal at first. It is several years, often many years, before rails must be replaced. Ballast will wear a considerable time without renewal.

Upon the other hand, there are certain items having mainly to do with the care of the embankment and cuts which the carriers assert are greater in the first years than afterwards. These items would refer mainly to the keeping in order of the structure upon which

the track is laid and would embrace the cleaning out of ditches, the restoration of deletions from the sides of the embankment, the keeping up of the alignment of the track, etc.

For the purpose of determining just how much the cost of these items in the early years exceeds their cost in later periods, the labor items entering into the expense of maintenance are separated. Certain costs, like the placing of ties, of rails, and of ballast, are subtracted from the total labor cost of maintenance. The balance is supposed to represent those labor items which are greater at the outset.

These items upon a new railroad for a series of years are compared with the same items upon an old railroad for the same years. Sometimes it is claimed that the period of appreciation extends over 5 years, sometimes over 10 years, and sometimes that it never ends. If the cost of these items for the aggregate period upon the new road is greater than the cost upon the old road, it is contended by the carriers that this demonstrates the greater cost of maintaining the new road.

This method of the carriers is open to serious objection. It involves necessarily the comparison of one road with another, and unless the two roads are in all essential particulars identical the comparison is of little value. Differences in climate, in traffic, and in operating conditions may be such as to render the comparison of little or no value. That was true in the instance presented by the carriers with the greatest elaboration and detail.

Again, the assignment of these labor items is necessarily an estimate. It may cost more to place a tie in one section than in another, or to place one kind of tie than some other kind. The expense of placing rail depends upon a variety of conditions, especially those relating to the operation of the railroad which interferes materially with all kinds of maintenance.

If the difference between early years and later years were pronounced, errors and differences like those above indicated
288 would not be of great significance, and the result might still be entitled to credit. But here the difference is not great. In a case cited by the carriers, the difference deduced was only $71.79 per mile per year, and this difference, if those roads which could not be regarded as fairly comparable were omitted, would be materially reduced. It is evident that a difference of this amount would be sensibly affected and might be entirely obliterated by the correction of some comparatively slight error in any of the above particulars.

For the purpose of testing the value of the figures given by the carriers, a comparison was instituted between these items of expenditure in the first years as compared with later years upon the same property. It is agreed that this process of solidification and adaptation takes place mainly within the first 5 years after the operation begins. In the instance above referred to the figures were available in only one case for the entire period of 10 years. Comparing these items of expense for the first 5 years upon this line while the process of solidification was proceeding with the same items for the last

5 years when that process had become substantially, if not entirely complete, it turns out that the average per mile for the first period is $322.08 and for the last period $355.08.

The figures produced by the carriers would, but for the very nature of the thing itself, tend to demonstrate that these items of expense in the first years of operation were less than later.

The Commission's engineers have given careful attention to this matter and have expressed the opinion that no attempt should be made to state in dollars this item of appreciation, for the principal reason that no substantial basis can be found for any calculation of this sort.

The benefits of appreciation would seem to be twofold. The cost of maintaining the seasoned roadbed is in some respects less than for the unseasoned. Traffic can be handled with less hazard and with greater economy after the roadbed has become compacted and adapted to its use. If it were possible to determine the amount by which the expense of maintenance or of operation is reduced as the roadway grows older, this might or might not afford a basis for estimating the enhanced value, but it has already been seen that it is not feasible to determine this fact with respect to cost of maintenance, and it is even more difficult to obtain definite and reliable figures upon the cost of operation.

Upon the whole, the conclusion is compelled that no value can at this time be placed upon this item of appreciation. It is a fact which must be considered when a final or ultimate value for the property is stated, but it is one of those qualities which while influencing value is not susceptible of exact enumeration and
289 appraisement in detail. What effect should be given to this item in the fixing of an ultimate value will perhaps depend upon the purpose for which that value is fixed and upon the past financial history of the property.

Prices.

When the engineering inventory is complete it contains an enumeration of the units of all the property owned or used by the carrier for common-carrier purposes, except land. In order to show cost of reproduction it is necessary to apply prices to these units.

Manifestly such prices must cover the entire cost of the unit in place, but the unit price as stated in the schedule does not always include the cost of installation.

The Commission has established certain so-called primary accounts, into which all expenses incurred in the construction of a railroad are to be thrown. Thus under Account 1 are included all expenses of engineering; under Account 2, all expenditures for land. Account 8 embraces ties; Account 9, rails, etc. According to the rules of the Commission, the cost of the tie, up to the time when it is taken by the track-laying gang, would be included in Account 8, and the cost of the rail up to the same point in Account 9. The expense of obtaining and delivering ballast upon the roadbed ready

for placing is embraced in Account 11. The cost of installing the tie, laying the rail, and placing the ballast is at the present time all included under Account 12, tracklaying and surfacing. It will be seen, therefore, that the unit cost applied in the inventory is that part of the total cost which under the rules of the Commission would be included in that primary account, which is sometimes the total cost of the unit in place and sometimes only a part of that cost. The rules of the Commission in this respect are followed unless the contrary is stated. It has been thought necessary in the work to create one new account, namely, Account 48, other physical property, to include certain expenses of reproduction which did not seem to be provided for under the accounts already prescribed.

Ordinarily the cost of a unit divides itself into three parts:

(*a*) The cost f. o. b. some point, usually the point of origin.

(*b*) The cost of transporting, handling, storing, etc., up to the time it is put in place, or in some instances taken out of the material yard for the purpose of being placed in position.

(*c*) The cost of installation proper.

Preliminary to any discussion of prices lies the fundamental question, How are they to be determined; by what test is the reasonbleness of the price to be examined? The carriers contend that the only proper evidence of these prices is the opinion of an expert. If the price of engineering be in question, then an engineer
290 must be called and his opinion taken. If the inquiry is upon the fair cost of grading, then a contractor must be produced, who should give his opinion upon this point.

The unreliability of mere opinion evidence is well understood by all those who have ever had experience with it. An opinion is personal to the man who gives it. It depends upon his education, his mental habit, his present mental state. It is influenced by his environment and often controlled by the objective point which he desires to reach. The same man may hold different opinions upon the same subject at different times.

Perhaps the most serious infirmity of opinion evidence is that the witness may be selected at the will of the one producing him. A fact must be established by those who have knowledge of it, who were present and saw it, for example, but an expert can be brought from the ends of the earth, and a dozen may be rejected until the right one is found. Given time and the money, almost any opinion can be had within certain limits.

After careful consideration it was felt by the Commission that it would be unwise and unsafe to depend chiefly upon the opinion of experts; that the only certain foundation upon which to rest was the experience of the past. Unit prices, for example, are being applied as of June 30, 1914. The attempt is not to determine the exact price of a particular article on that date, for that price may have been abnormally high or low, but rather to ascertain what may be termed a normal price. For this purpose it was thought that the range of prices over a period of 5 years previous, and in some cases 10 years, should be consulted. The Commission therefore passed an order, known as Order No. 14, requiring carriers to state the prices

paid by them for materials and supplies of all kinds entering into the construction and operation of a railroad for 5 years previous to June 30, 1914, and in some instances for 10 years, also the cost of certain kinds of labor. The prices called for were ordinarily those paid for four different purchases each year which were indicated by the order itself and not left to the selection of the carrier. The carrier was required to state the money payment which had been made. No estimate was permitted, or, if any estimate must be made of any part of the cost, the fact that it was an estimate must be stated. This return was prepared by the carrier from its records and sworn to.

This return was sometimes verified by the accountants of the Commission and sometimes accepted without such verification. A compilation was made showing in general the average price paid by carriers for the various articles embraced. That result was usually stated in terms f. o. b. the point of shipment, and in this way
291 was obtained the average price paid by the principal carriers of the entire country for a given article at a given point.

This average furnishes the basis of the price applied by the Commission. It is not necessarily the exact price. In addition to prices obtained from the carriers, manufacturers have been consulted and statements have been furnished by them showing the prices at which standard goods had been sold to railroads during the same period. Members of the staff of the Commission often personally interview such manufacturers and dealers with a view to ascertaining pertinent facts.

All this information is passed in review by our engineers, who finally fix the price to be applied That price, however, as already suggested, is determined by what carriers have in reality paid, modified in some cases as may seem just. The Commission, after having worked out prices by this method and listened to the criticism the carriers made upon the same, has no doubt of their substantial accuracy. While individual carriers have paid and would have paid, had they been constructing their properties during the five years preceding June 30, 1914, prices somewhat varying from those applied to our inventories, considered as a whole the prices employed are believed to be fair. In some cases those prices have been the result of agreement between the bureau and the carriers.

The ascertainment of the cost of installation presents a more difficult problem, but one of the same kind. All labor costs involve elements of uncertainty and variability which make the ascertainment of such costs less easy, but here again it is felt that while the differences may be greater in individual cases, the general average furnishes a basis upon which the Commission may rest with confidence. The best measure of the cost of doing a piece of work on June 30, 1914, is what that work did in fact cost during the years immediately preceding that date.

The carriers were disposed to concede this, and offered to supply the Commission with a great number of completion reports giving in detail the cost of various projects. It was felt, however, that it would be impossible as a practical matter to compile and analyze all cases of this kind which would be furnished under an omnibus

requisition, and that if the carrier was allowed to select there might be some possibility that the Commission would be furnished with jobs not fairly illustrative. Carriers were therefore requested to file with the bureau of valuation a list of all such projects which could be supplied, from which the bureau selected certain —, chosen sometimes at random and sometimes because of the nature of the work embraced. Reports on these selected projects were made by the carriers in duplicate, one copy being sent to the engineer
292 having jurisdiction over the district where the work was done and the other retained in the general office. A great number of reports of this character have been received.

Carriers also furnish to the engineer in the district, without reference to the general office, certain completion reports. These are supplied sometimes at the request of the engineer and sometimes upon the initiative of the carrier. They are in all cases prepared by the carrier and are supposed to be an exact reproduction of its records.

In each district one or more accountants are delegated for the collection of cost data under the direction of the engineer of the district. These accountants examine the records of the carrier either for the purpose of verifying the information which has been furnished in the form previously explained or of obtaining new information. Whatever is taken is from the record of the carrier itself.

The reports returned to the general office as above are there compiled and digested, frequently in collaboration with representatives of the carrier. For example, many reports have been received from all parts of the country giving the cost of erecting steel bridges. These different costs are put together and averaged, usually by localities, so that the actual cost of erecting a steel bridge of a given type in recent years for any part of the whole country is accurately known. When these compilations are completed at the general office the result is sent into all the districts.

Each district maintains a cost organization of its own, which compiles in the same manner cost data collected by that district and not returned to the general office. The result of this compilation in the district is usually transmitted both to the general office and to the engineers of the other districts.

It will be seen, therefore, that when the engineers of a particular district are called upon to price an installation they have before them the record of what it has cost to do similar work in numbers of cases. They are themselves men of experience and of judgment who have built, bought, and installed the kind of material or apparatus under consideration. They are practical men who bring to the question before them judgment ripened by experience. They are actuated by the sole desire of applying a proper price.

The price so applied is mainly dependent upon past experience, but it is not a mere mechanical average. Both the engineers who supervise the compilation and those who apply the price are familiar with the subject and property under consideration. While the price depends upon the cost data and can be relied upon in proportion as

it is supported by such cost data, it must be such as commends itself to the judgment of one qualified to judge.

293 Costs arrived at in this manner will not exactly coincide with the original prices paid; some will be higher and some lower than those which obtained on original construction. A stroke of hard luck may inflate the price; there are wet seasons and dry seasons; organization and coordination profoundly influence cost. Labor conditions may be entirely different. All this may affect individual prices, but it is believed that the general price arrived at by the foregoing method can be used with confidence in reaching a reproduction estimate for railroads as a whole. This method is better than mere expert opinion, for the opinion of the expert is valuable in proportion as his experience has been broad and universal, while here we have the experience not of one but of hundred of experts.

As already noted, the cost of the material handled is ordinarily at the point of purchase. To this must be added the cost of transportation to the point of installation. Ordinarily the commercial freight rate is applied up to some point upon the line under construction, but to this rule occasional exceptions occur. It is sometimes found that no commodity rate applicable to the transportation of rail is in effect over a portion of the line, the only published rate being the class rate. In such case what is believed to be a reasonable commodity rate is used. If the transportation over the line under construction is by rail a haulage-charge estimate at the rate of 5 mills per ton-mile is usually made. For wagon haul the charge is varied with the conditions of service.

In estimating cost of reproduction the existence of all present lines of transportation except the railroad under reproduction is assumed. When the Northern Pacific was constructed no other line of railroad operated in its vicinity over most of the distance; to-day for a considerable part of the way that line is paralleled by the Chicago, Milwaukee & St. Paul. It will be recognized that freight for the construction of the Northern Pacific can be handled over this line.

It was necessary in the building of the Central Pacific to construct expensive wagon roads for the purpose of hauling the necessary materials. To-day those are highways maintained at the public expense and are available. Whenever it would be necessary to build a road not in existence, that expense is included in the price.

Our inventories are taken as of different dates, but all prices are applied as of June 30, 1914. The first thought was to apply prices as of the date of the inventory in each case, but subsequent reflection led to the conclusion that this course could not properly be pursued.

The railroads of this country are competitive. If the costs which are being produced by the application of these prices are to be influential in the fixing of rates, they ought to be upon some common basis. Without attempting to indicate how far changes in

294 prices should affect changes in value, it is manifest that all carriers ought to be, if possible, measured by the same standard.

The fluctuations in price which have occurred since June 30, 1914, illustrate and confirm this view. Many prices, especially of equipment, are to-day double those of 1914. It would, in our view, be manifestly absurd to apply to the Pennsylvania lines between Washington and Philadelphia, of which the date of valuation is 1914, prices as of that date, while applying to the Baltimore & Ohio, a parallel line constructed at substantially the same time and developed under the same conditions, the prices of June 30, 1918, which happens to be the date of its valuation. If a uniform price be applied that price can be varied by appropriate factors or otherwise as justice may require.

Under that provision of the act which requires the Commission to keep informed as to changes in the operative property of carriers, the Commission has passed an order requiring every carrier to keep an account in detail by jobs of all additions to the property and of all retirements. These accounts are to be kept by valuation sections. It will therefore be possible for the Commission to know what additions to the property have been made and the price in fact paid for those additions since 1914. The order in its present form did not become effective until July 1, 1917, so that there may be a brief interval in the case of some carriers since June 30, 1914, as to which additions and betterments can not be given in detail; but this is of slight importance, since there was no material variation in price during most of that period.

While the Commission is not as well informed to-day as it hopes to be before the end of its work, we are prepared to state with considerable confidence that the cost of producing and equipping a railroad in most parts of this country on June 30, 1914, was a fair average for at least the 20 years preceding. There had been many changes during that period. Some prices had advanced while others had declined. The cost of labor had somewhat increased, but improved methods tended to offset this increase. On the whole, the 1914 cost was just about an average for those previous years during which the great bulk of the railroad property then in use had come into existence.

The inventories are taken as of June 30. A few are as of 1914 and there will be a few as of 1919, but most are for 1915 to 1918 inclusive. When these inventories are completed and when the returns to Order No. 3, which calls for additions and betterments, have been made, it will be possible to show what items have been added since the present inflation of prices began and the amounts actually expended.

295 Overhead Charges.

When an inventory has been prepared, including every item of physical property which enters into the construction of a railroad and when a proper price has been applied to every item in that inventory covering both the expense of acquiring the property and of putting it in place as a part of the railroad, the result does not express the entire cost of the physical railroad itself for the reason

that certain expenses connected with the production of this property have not been taken into account.

Before the building of the railroad or even the preliminary steps looking toward its building can be undertaken, a corporation is organized. There must be some entity to hire men and disburse money. The creation of this corporation entails the procuring of legal services and generally the payment of certain fees and other expenses. Engineers must be employed to locate the line, prepare contracts, supervise the construction, etc. There must be a general organization with the necessary employees for the purpose of conducting the work and making record of the details. Money must be provided for the payment of expenses as the work progresses and the interest on this money is in addition to the capital invested. It is evident that these items and others of a similar character call for the outlay of money, and that they are not represented in the inventory which has been prepared and priced. These items are ordinarily denominated "overhead charges" for the reason that they attach, not to any particular structure or part of the work, but to the work as a whole or at least to a certain class of that work.

It must be conceded that a railroad could not be built without expenditure for some or all of these items, and that if the cost of reproduction is to be indicative of the cost of production at present some inclusion must be made on this account. Such overhead expenses have universally appeared in the past in all reproduction estimates, but while the propriety of the allowance has been universally admitted, the amount has varied greatly and opinions are not uniform as to the items themselves for which it should be made. The aggregate of these overhead charges has run in well-considered reproduction estimates from 10 per cent to 30 per cent of the total of the inventory. If it be assumed that the inventories of the physical property of the railroads of the United States would aggregate $15,000,000,000, 20 per cent, the difference between the extremes above stated would amount to $3,000,000,000. It will be seen, therefore, that from a money point of view it is of great importance that these charges should be intelligently considered. Seemingly in the past the amount of these charges has depended rather
296 upon the impression of the engineer who applied them than upon any well ascertained basis of fact. It has been the attempt of the Commission to reach a conclusion grounded, not upon impression or inclination, but upon a substantial foundation. The attempt has been made to bring these charges under the same test which has been applied in the development of prices, namely, the actual experience of the past. The conclusion reached and the reasons for that conclusion will be given under the different items which are here classed as overheads.

Contingencies.

In many estimates of the cost of reproduction in the past some sum has been included in the nature of an overhead charge for contingencies. This has generally been computed as a percentage and has varied from 2 per cent to 10 per cent. Sometimes the same per-

centage has been computed upon both road and equipment accounts while in other cases a larger percentage has been used for road accounts than for equipment.

Carriers have continuously insisted that an allowance of this kind is proper and necessary and that it should be not less than 5 per cent nor more than 10 per cent. They unite in giving one reason for this opinion. It was said by them that in estimating the cost of constructing a new railroad there should be added this percentage for contingencies, and that the same addition must be made in estimating the cost of a hypothetical reconstruction. The accuracy of this conclusion may be tested in the light of undisputed facts.

When the building of a railroad is in contemplation the engineer locates his railroad, ascertains what facts he can as to physical and commercial conditions under which that railroad is to be built, makes his surveys, draws his plans, and from these surveys and plans determines the quantities which will enter into the construction of the road. He then applies to those quantities what he believes to be a proper price, and thereby shows the total expense of building the railroad. The accuracy of this estimate will depend upon the character of the man who makes it and the care with which it is made; but even though the engineer be competent and the work done with care it is still found necessary by experience to add to the estimate from 5 to 10 per cent for contingencies to cover matters which have not been foreseen. No question can be made that the prudent engineer and the prudent investor will do this, and that experience demonstrates the practical necessity for such an addition. But what are the reasons for this allowance, and do those reasons apply in case of a reproduction estimate?

297 There are perhaps two general classes of items which justify the estimate for contingencies in case of the road to be constructed. It is almost inevitable that some things will be forgotten which are finally necessary to the completion of the property. If a complete detail of the construction expense as actually incurred be compared with the detailed estimate, it will be found that certain items in the former do not appear in the latter. These omitted items make up a considerable part of the estimated cost of contingencies.

In the building of the railroad unexpected difficulties are encountered. The character of the excavation is not what was anticipated. Rock is found where earth might have been expected. Quicksand may develop, which will add largely to the cost of the work. Bridge piers must be given a greater depth of penetration than was indicated by the borings and soundings. These and numerous other unforeseen conditions add to the total cost of the work.

Neither of these two classes of items which make up the greater part of the sum total of contingencies in new construction is present in the estimate of reproduction. The road has been constructed. Every item which enters into the property is present and can be inventoried. Those things which are omitted in the estimate of original construction are all here in case of the completed property. The first class of items, which renders an estimate for contingencies

imperative in case of new construction, disappears in case of reproduction.

It may be said, although that claim has not been very clearly urged by the carriers, that it is impossible to enumerate all the items of property which enter into the construction of a railroad, and that some sum must be included to take care of inevitable omissions. While this might be so in case of an inventory hastily taken, it is not true of the inventories made by the Commission pursuant to the valuation act. To an extent the Commission's inventory is made in the first instance by the carrier and checked by the Commission. This is true of equipment. The carrier furnishes a list of its rolling stock of all kinds, and that list is verified by the representatives of the Commission. It is significant as bearing upon the accuracy of the work that up to the present time in no case has there been any dispute between the carriers and the Commission as to the units of equipment which the carrier owns. Further investigation by the Commission's engineers has shown that many such units which appeared upon the records of the carrier as in existence were no longer in service, and in some instances equipment has been identified which did not appear upon the records of the carrier; but in the end there has been a complete agreement between the carrier, the engineer, and the accountant, all approaching this subject from different points of view.

298 The carrier is also required to make an inventory of its larger machines. It is allowed to estimate, if it chooses to do so, its small tools. If such an estimate is made, as it should be and usually is in some form, it is evident that it will not be absolutely accurate, but the variation from the fact is just as likely to be in favor of the carrier as against it. In other words, the element of doubt which exists in that part of the inventory ought not to be corrected by an addition for contingencies.

The inventory of other portions of the property, particularly the roadway, is conducted upon a different basis and is in some sense the joint product of the bureau and the carrier. The carrier makes careful preparation in advance of the taking of the inventory. The pilot of the carrier, armed with this advance information, accompanies our parties for the purpose of pointing out the property to be inventoried. Carbon copies of the field notes are in all cases furnished the carrier if desired, and to the record which those notes contain objection can be made by the carrier and the matter subsequently investigated.

There are certain quantities which are hidden and can not be observed. In the inventorying of those quantities the representative of the Commission must rely largely upon the statement of the carrier, supplemented by such records as it possesses. In ascertaining the thickness of a retaining wall, the depth and size of foundations, the original ground line in case of excavation, pipes and drains underground, etc., the statements of the carrier are necessarily accepted unless they are manifestly wrong.

In the making of an inventory in this way the liability to error is rather in favor of the carrier than against it, since as to matters which can not be observed and known the statement of the carrier is

necessarily accepted. It would be utterly wrong to make an addition for contingencies for the purpose of correcting an omission in an inventory made up as this inventory is, for while it is not absolutely accurate, there is no manner by which it can be determined in whose favor the error is.

What is true of omissions in the estimate of original cost is equally true of those unforeseen happenings and conditions which in preliminary estimates must be taken care of by an allowance for contingencies. The engineer in the making of his original estimate may overlook many of the difficulties to be encountered; the engineer in estimating cost of reproduction has before him every one of those difficulties. If the sounding rod struck what appeared to be solid rock but was in fact a boulder, and if for that reason the pier must be sunk 20 feet deeper, this is known to-day.

299 An instance was brought to attention where in the addition of a second track quicksand developed which required a large amount of expensive excavation, the replacing of solid earth where the quicksand had been, and the construction of an expensive mattress to be used in that connection. It was said that this was a contingency. So it was in the original construction of the property; but today the thing done is there and the cost of doing it will all be estimated in reproduction. No second allowance should be made by way of contingencies.

Plainly, the reasons for a contingency allowance in case of new construction do not obtain in case of reproduction, and since the reason upon which the opinion of all these witnesses was based fails, the opinion itself must go for naught.

It should be further noted that certain matters which might be termed contingencies are taken care of in the price. This is illustrated by the building accounts. In determining the reproduction cost of a building a bill of materials is prepared and prices are applied. To this an addition is made on account of contingencies or contractor's profit or both. This is to cover that element of uncertainty which exists in every estimate. The result is the figure for which the building could be built by the carrier or for which it could be contracted to a responsible contractor if that method were preferred. Certainly nothing further should be added to the cost thus determined on account of contingencies.

An important account in the construction of a railroad is grading. Our reproduction inventory shows the cubic yards of the various kinds of material which must be moved, common excavation, as solid rock, loose rock, etc. A price per yard is applied which is based upon known contracts; that is, upon the price which railroads have in the past paid for the moving of similar material under similar circumstances.

The contract leaves the embankment ready for the track, but it appears that in practice certain things are generally done by the grading contractor, some of which doubtless should be embraced in the grading account but are not embraced in the contract price. For example, it may be necessary to erect a temporary bridge for the purpose of carrying a highway over a cut which the contractor is open-

ing. This is sometimes included in the contract price by the terms of the contract, but frequently, and perhaps generally, work of that kind is an extra. The same would be true of the change of a highway, the construction of a ditch off the right of way, etc.

It also sometimes happens that the embankment or the cut, after being completed by the contractor and accepted by the rail-
300 road, is damaged. The repairing of this damage is an additional cost which should be included in the grading account but is not covered in the contract price.

Careful studies have been made for the purpose of determining the amount of these items which are termed excess cost of grading or miscellaneous items, and it is found that this sum varies, depending upon the character of the property, the locality, and various other conditions, from practically nothing up to 3 or 4 cents per cubic yard. An attempt is made in every case to include a proper amount on this account in the price of the grading itself. Where the grading account has been made up in this manner certainly nothing should be added for contingencies.

In some of the primary accounts there is no contingency. This would be so of rail. It would be true of ties if properly handled and cared for. Wherever there is a liability to loss that fact is taken into account. In the laying of rail, for instance, a certain number of spikes will be lost. The carrier to produce a mile of track must purchase more spikes than will be found in the completed track, therefore the quantity of spikes actually found is increased sufficiently to cover the quantity which must as a practical matter be purchased. The same sort of an allowance is made in other cases where necessary.

The chief insistence of the carriers in favor of this inclusion is that inasmuch as it has been commonly allowed in the past it should be made here. But this would by no means follow. Such an addition might perhaps be made in case of a superficial inventory, where omissions and oversights would be expected, but not in one made with greater care. Much would depend upon the method by which prices were determined. Nor can it be said that the methods and practices involved in the valuation of railroad properties in the past have yet reached that state of permanence which entitles them to the rank of authority.

It is truly said that in the building of a railroad all sorts of unforeseen contingencies occur. There will be accidents which could not be forecast. Floods may come. Strikes may occur. Many things may happen which will increase the cost over what it would have been under perfectly normal and favorable conditions. It must be remembered, however, that our prices have been determined with respect to the actual experience of the past, and this experience includes every item of the sort referred to. Accidents, washouts, labor disturbances, everything of that kind have occurred in years gone by and have been paid for by the carrier in the production of the property.

301 Our price is often based upon the contract price under which work has been done, and it is said that the contractor

has frequently lost money. One contractor may lose money and another contractor may make an undue amount, but on the whole the contract price is that price which experience has shown to be a fair one and which contractors of judgment are willing to accept. No contractor would name a price which did not include all the elements of chance above named and many others. There would be no propriety in allowing a second time for contingencies of that class which have been once compensated for in the price applied.

The question is not what has been done in the past, but rather what ought to be done now. After careful consideration the Commission has felt that much more reliable results would be obtained by giving due weight to this element of doubt at the specific points where it occurs rather than by making some general addition applicable to the entire inventory. No general allowance has therefore been made for contingencies under that name.

Engineering.

The engineer plays a prominent part in the building of a railroad. His services antedate the work of actual construction and continue throughout construction and into operation. Expenditures for engineering have always been assigned to a separate primary investment account.

In determining cost of reproduction it has been the general practice in the past to include a gross sum for engineering in the nature of an overhead expense. Some of the state commissions have claimed that this is not correct; that while perhaps a certain part of engineering cost may be treated as an overhead, the bulk of it should be assigned to particular structures.

A certain portion of the engineering expense incurred in the building of a railroad, and which must be incurred in the reproduction of that railroad, could not be allocated to particular items of property. This is manifestly true of that preliminary engineering outlay which precedes the beginning of construction and which is very considerable in amount.

During the progress of construction the chief engineer and his immediate organization are engaged in general supervision of the engineering work upon all parts of the property, and manifestly that engineering expense could not be allocated.

To an extent the cost of engineering peculiar to certain structures might be known. An engineer may be assigned to the building of a bridge or a tunnel. This, however, is unusual, since in actual practice the same engineer will supervise all the work upon a
302 particular section of the road or the work of a particular kind upon a given section. It would be difficult to assign to a given structure the amount of his salary and expenses which actually belongs there. In point of fact the accounts of carriers in the past have seldom been so kept that it would be possible to make such an allocation of engineering cost to any considerable extent.

The conclusion was reached after the most careful consideration with the engineers of the Commission that to attempt to allocate the

cost of engineering to particular pieces of property would be a refinement not practiced in the past, not called for in the present work, and which for lack of supporting data would introduce an element of greater uncertainty rather than greater certainty. It was therefore determined to adopt the almost universal practice of the past and to treat engineering as an overhead charge which could be properly stated in a single gross amount.

For the determination of this amount two methods are open, the synthetical and the historical.

Under the synthetical method an attempt is made to determine the amount of engineering service which will be required and its cost. A construction program is mapped out; the number of engineers required is determined; their grade and salaries are fixed; the length of their service is stated; and in this way the total amount of the expenditure is arrived at.

This method was employed by the bureau of valuation in case of all properties first valued, with unsatisfactory and inconclusive results. The objection is that no supporting data can be found. Reliance must be placed entirely upon the judgment of the man who makes the estimate. It is not possible to bring that judgment to the test of experience as disclosed by the records of the carriers.

The historical method inquiries what this expense has been in the past and seeks to determine in this manner what it would be to-day. For years engineering has stood as primary Account No. 1. It is one of the few accounts which have never been changed. It has been easy to distinguish those items which should go into this account. The cost of engineering is therefore known with substantial accuracy as to many railroad properties.

In estimating the cost of new work it is customary to add a percentage of the total cost for engineering. In estimating the cost of reproduction in the past the same practice has been followed. While carriers have made some objections to the use of the percentage method, no substantial reason has been given for that objection.

Assuming that engineering is to be computed as a percentage, upon what base should it be reckoned? Should the entire cost of
303 the property be taken or should the percentage be applied to certain items of cost?

The investment accounts of a railroad are divided into three general classes—road, equipment, and general expenditures. It is evident that there is no connection and therefore no necessary relation between engineering and general expenditures. This class of accounts should therefore be omitted in computing engineering.

In some cases engineering accrues as an expense in connection with equipment and in others it does not. With smaller roads and with many of the larger roads equipment engineering is furnished by the builder and becomes a part of the price paid for the completed article. It often happens, however, that equipment is furnished according to specifications prepared by the carrier, and this involves an item of engineering expense. Considered as a whole, the proportion of engineering cost assignable to equipment is almost negligible.

The relation between the cost of equipment and the cost of the

roadway varies greatly with different properties. There is no definite relation between the cost of engineering and the cost of equipment, and therefore equipment should be disregarded in seeking a satisfactory base for the computing of engineering as a percentage.

This would leave the road accounts only, and from these engineering itself should be excluded. The same is also true of land in connection with which there is little or no engineering proper.

It would seem, therefore, that the road accounts, exclusive of land and engineering, afford the most reliable base for the computation of engineering as a percentage.

Having determined that engineering is to be stated as a percentage upon the road accounts, exclusive of Nos. 1 and 2, how shall the amount of that percentage be determined? If possible, the same method should be followed here as in the determination of prices. If the cost of engineering in the past can be ascertained, that should be used as a guide in the making of this reproduction estimate.

It is possibly true that this item in the investment account of an old railroad which has attained its present stage through a process of development extending over several years may not represent what it would cost for engineering if that road were to be constructed *de novo*. The accounting rules of the Commission do not permit a carrier to include in the cost of a betterment or addition to its property anything on account of engineering service rendered by the operating engineers of the carrier. It usually happens that railroad systems of considerable size employ engineers of ability as a part of their regular operating force, and these engineers exercise a certain amount of supervision over additions and betterments to the property. To an extent, therefore, engineering is not in-
304 cluded in the cost of these subsequent improvements and does not appear in the total of Account No. 1. But with pieces of new construction, especially if that construction is by independent companies, the cost of engineering is generally authentic and reliable.

For the purpose of determining what was fairly indicated by the experience of the past the Commission took a great number of pieces of construction which had been completed within the last 10 or 15 years and deduced the percentage ratio borne by engineering to the road accounts exclusive of Nos. 1 and 2. The result was reasonably satisfactory. There were a few cases where the per cent fell below 2 and a few others where it rose above 5. An examination of these cases showed that there was something either in the character of the project or the manner in which the work had been done which excepted them from the normal. In the great majority of instances the percentages ranged between 2 and 5. When plotted upon a chart it was found that the bulk clustered around 3.5 per cent and the average of all was 3.6 per cent.

The carriers collected a great amount of similar evidence. The average result shown by the instances which they compiled was something over 4 per cent, but the number of carriers embraced in their exhibit was much less than those considered by the Commission,

and it was felt that the exhibit was not equally representative and that the average was not a fair one.

Upon the strength of this investigation the engineers were instructed to compute engineering as a percentage of the road accounts, excluding Nos. 1 and 2, and that the percentage so included should not be less than 2 nor more than 5 per cent. If an abnormal case arises in which the engineer believes a greater or less sum should be estimated, he will list that case for special discussion and determination.

It may be inquired how the engineer will determine where to fix his percentage between these limits, and the answer is obvious. He must consider the nature of the property with which he is dealing. If the railroad runs through a comparatively level country, crossing few streams, and therefore with few bridges, slight cuts, and no tunnels, the percentage of engineering would be comparatively low even though the cost were also small, but as the difficulties increase the percentage would rise. It must be noted, however, that the percentage may be comparatively low, although the engineering difficulties are many, for the reason that the total cost of the work is large and the percentage of engineering therefore small, although the gross amount of engineering is itself large.

In fixing this percentage the engineer also frequently derives great assistance from what he can ascertain as to the original cost.
305 This is by no means conclusive, but it is always instructive and when ascertainable is carefully considered.

Engineering has not been depreciated. It is a labor charge and ordinarily labor depreciates along with the article into the cost of which it enters, but for the reasons named below this rule has not been applied to engineering.

Of the remaining expense the most considerable part is assignable to the providing of the structure upon which the ties and rails are installed. Of this structure the greater part appreciates rather than depreciates. The bridge and the culvert deteriorate but under proper maintenance the embankment does not.

In view of the difficulty of distinguishing between that engineering which was assignable to the location and laying out of the property and the allocation of the remainder to that part of the property which did not depreciate, it was deemed best to treat the entire item as nondepreciable, and this course has been followed.

General Expenditures.

Under general expenditures are included those items of expense which can not be assigned to any particular article or property, like the expense of organizing the corporation, legal expenses, etc. These expenditures are from their definition overheads and are always allowed as such. Interest during construction is properly a general expenditure and is usually treated as such, but in our work interest is considered by itself and all other items of general expenditure are thrown into a single item for the reasons stated below.

The accounts embraced under general expenditures according to the present classification are as follows:

No. 71. Organization expenses.
No. 72. General officers and clerks.
No. 73. Law.
No. 74. Stationery and printing.
No. 75. Taxes.
No. 76. Interest during construction.
No. 77. Other expenditures—general.

This classification has been in effect since July 1, 1914.

The corresponding accounts in the previous classification were as follows:

No. 43. Law expenses.
No. 44. Stationery and printing.
No. 45. Insurance.
No. 46. Taxes.
No. 47. Interest and commissions.
No. 48. Other expenditures.

306 It will be seen that the present classification does not include commissions with interest. Since commissions frequently amount to very considerable sums and since they were exceedingly variable it is evident that that account, as stated in the old classification, is of no value whatever in showing the actual expenditures for interest during construction. This, however, is unimportant, since interest is dealt with in an entirely different way in showing reproduction cost and may be entirely disregarded in the present discussion of general expenditures.

Eliminating interest, it is evident that while some of the accounts are identical, most of them are not. Those which are the same are comparatively small in amount. Under the new classification the largest account is usually No. 72, general officers and clerks. This item, as well as organization expenses, was formerly included in Account 48. Organization expenses seem sometimes to have been reckoned with law expenses under the old classification. While, however, it is impossible to find any supporting data for an allowance of general expenditures according to the present classification in the accounts of the carriers as previously kept, the general expenditures accounts as a whole include the same items to-day which were included in the corresponding accounts as a whole under the previous classification, excepting interest and commission. In view of the comparatively small amount of the expenditure in case of most of these accounts, the satisfactory way seemed to be to exclude interest and consider the balance as a whole or as one item and to inquire of the past what the amount of this item ought to be.

If general expenditures, exclusive of interest during construction, are to be treated as a percentage, upon what basis should that percentage be computed? Equipment involves a very inconsiderable part of these general expenditures which are mainly associated with

the construction of the road. It has been determined therefore to put this percentage upon the road accounts exclusive of No. 2, land, which is considered as an independent item.

To determine the amount of this percentage resort was had to the same method by which engineering had been ascertained, the same projects being used. The result was not satisfactory. When the completion reports were distributed among the different engineering districts it was found that a material difference in the percentage existed. The reason for this difference could be understood upon an analysis of the figures, but every analysis indicated that in two of the districts the figures were inherently unreliable. Recourse was had to individual cases which were believed to be fairly typical of what might be expected under normal conditions, and while the percentage was not altogether uniform there was in these instances a substantial agreement.

307 This item is not large in amount but it is from the very nature of things impossible of any exact estimate. Upon a view of all the facts before the Commission it is believed that 1.5 per cent of the road accounts, excluding land, would be a fair amount to estimate for all general expenditures as now classified by the Commission with the exception of interest during construction. In some states a large charter fee is required, depending upon the amount of capital stock and bonds named in the articles of incorporation, and our engineers are instructed in such cases to ascertain the amount of this fee and add it to the 1.5 per cent where it is more than nominal. In states where no taxes are levied upon railroad property during construction, that fact is considered.

General expenditures are depreciated with the accounts used as the basis for computing the percentage. As already noted, these expenditures accrue almost entirely in connection with the road accounts. While organization, and perhaps a part of legal expenses, would not properly depreciate, these are ordinarily an inconsequential part of the whole which would depreciate along with the items of property in the production of which they are incurred.

Cost of Obtaining Money.

The cost of obtaining the money with which to finance the construction of a railroad has been frequently and perhaps usually treated as an overhead. After mature consideration, it has been thought best in reporting cost of reproduction new to show nothing on this account as such but to include any necessary charge of that character in the interest rate.

Ordinarily a railroad corporation finally obtains the money with which to defray the expense of constructing its property by the sale of stocks and bonds, but the date at which such sale is effected depends upon a variety of circumstances. The necessary money may be borrowed on short-term paper and the bonds issued and sold at the end of the construction period. The bonds may be issued before the beginning of construction and turned out as collateral for short-term notes during construction, or the bonds may be sold in advance

of the beginning of construction. An examination of the financial history of our railroads indicates that the last method has been seldom used.

Whatever method is adopted would involve a certain amount of expense. If the money were borrowed on short-term notes there would be some small charge, not exceeding 1 per cent and usually not exceeding one-half of 1 per cent, for brokerage. If the bond was sold, there would usually be a discount which would include
308 the brokerage charge proper and which would depend upon the rate of interest, the length of the term, and the credit of the company.

The most important factor in determining the cost of obtaining the money and the rate to be paid for the same would be the credit of the borrower. The United States government could probably borrow the money in normal times for from 3 to 3½ per cent. A strong railroad with the best of credit could obtain it for approximately 4½ per cent. A weak railroad might not be able to obtain the necessary funds at any rate without financial support, for which it must pay in some form.

It was felt at the outset that it might be necessary to determine in each case the cost of obtaining this money; that is, that inquiry must be made into the credit of the company and the circumstances which would surround its financing. Further reflection, however, showed that this would be an almost impossible task, and that the result would be misleading rather than informing. On the whole it seemed best to assume that the credit available when the property was being reproduced was in all cases good and the same; that money would be obtained at the same rate and supplies purchased on equally advantageous terms. Upon no other theory would the cost of reproducing the different properties be fairly comparable.

This being settled the next question is as to the rate of interest to be adopted. Six per cent is the legal rate of interest in a large section of this country where no other rate is specified. An examination of the sale of bonds of various kinds for the five years preceding June 30, 1914, led to the belief that this rate would be ample to cover not only the interest on the money but any brokerage which would usually be charged for the obtaining of the money. It has been assumed, therefore, that at 6 per cent whatever money is needed can be obtained, and that this rate of interest will cover the entire cost of obtaining the money.

It should be noted that under the accounting rules of the Commission now in effect if bonds are sold at a discount that discount is carried into a suspense account to be amortized from year to year out of earnings or otherwise during the life of the bond. This discount, therefore, while in one sense as asset which is to be paid for by the public in subsequent years, is no part of the expense of construction or at least only to the extent of the discount which has already been amortized at the beginning of operation.

It should be further borne in mind that engineering reports do not attempt to place a final value upon properties. There may be facts in the financial history of a corporation which would make it just to consider the cost to that road of obtaining money in the

determination of its final value. The financial history of
309 every corporation is fully dealt with in the accounting report. The engineering report deals merely with the physical property of the carrier, and in estimating the cost of reproducing that property new it is assumed that the money can be had for 6 per cent without additional cost and without inquiring how it is to be obtained.

Interest During Construction.

A considerable time is required to construct and put into operation a railroad. The expense of building and equipping that railroad must be met as the work proceeds. For the use of the money required for this purpose from the time it is obtained by the company up to the period when operation begins interest must be paid, and it is universally conceded that this interest is an item of expense in the construction of the property which should be included in a reproduction estimate. Such an item is provided for by the accounting rules of the Commission. The debatable questions are as to the rate and length of period for which interest is to be computed.

It has already been stated in the previous discussion upon the cost of obtaining money that 6 per cent is the rate to be applied and that this rate is taken as including all other costs in connection with procuring necessary funds for construction.

In the valuation of railroads, it has been customary in the past to allow interest upon the entire reproduction cost of the railroad for one-half the construction period. This is apparently done upon the theory that expenditures would run over the entire period of construction at about the same rate.

The equipment of a railroad very often makes up a considerable part of its entire cost. This is not usually purchased until the road is practically completed, and but little, if any, interest is paid on expenditures on this account up to the time that operation begins. For this reason it did not seem proper to treat payments for equipment the same as payments for other items of construction, and it was finally decided to allow in most cases interest upon equipment for three months.

Disregarding, then, the item of equipment, we come to inquire for how long a time should interest be computed upon the balance of the expenditures and upon what accounts?

Land is not included in the engineering report nor do we attempt to show the cost of reproducing the operative lands of a carrier. Interest should not therefore in this connection be computed on Account No. 2. It should apparently be reckoned upon all the road accounts except this and upon general expenditures except interest during construction.

310 The length of time for which this interest should be reckoned is one of the most difficult questions connected with this whole reproduction estimate. Carriers have usually insisted upon a long period, and in the very nature of things there is no exact standard by which the issue can be determined. With a view to obtain-

ing such information as is available a careful study has been made of the records of the carriers for the purpose of ascertaining what time has been actually required in the past. From these studies it clearly appears that there are two construction periods. There is, first, a preliminary period during which the feasibility of the enterprise is frequently under consideration and which covers preliminary and location surveys. This period is extremely variable, being in some instances only a few months, while in case of other properties of the same extent several years have been spent. The expenditures during this period are insignificant as compared with the whole and the better plan has seemed to be to entirely disregard this preliminary work, both in stating the construction period and in the computation of interest, and to treat the relatively small amount of interest which may be considered as accruing during the preliminary period in connection with and as covered by the estimate for the construction period.

After the preliminary period comes the period of actual construction, which in our work has been treated as the construction period. With respect to the length of this period the following two observations may be made:

(1) An examination of the construction history of many railroads shows that construction has seldom proceeded as rapidly as it might economically have done. Delays have been due to a great variety of causes, but oftenest to financial difficulties. For this reason the period of construction as it in fact existed in case of particular properties is not necessarily a fair measure of what the construction period for those properties should be, nor is the average construction period a fair test.

The construction period as determined by our engineers is not supposed to represent the shortest time in which the railroad could be constructed, but rather that period within which the work might be economically done. The usual delays which occur on the average in normal times due to labor and market conditions are assumed to exist, but unusual delays due to financial troubles and to other causes peculiar to individual properties are eliminated.

(2) All existing means of transportation aside from the property itself which is under reproduction are assumed to exist. A given railroad is usually crossed by several different roads, which makes possible the bringing in of men and materials at these junction points. This enables the engineer to proceed with his
311 hypothetical reconstruction at several different places at the same time. Assuming that conditions are the same along the entire line, a road 300 miles in extent might be reproduced in nearly the same time as a road 100 miles long.

This assumption often very much reduces the period allowed for reconstruction below that historically required for the building of the property. The Northern Pacific has been already referred to in this connection. When that road was built it ran through miles of territory where no other railroad existed. Materials and supplies must be carried into that country over its own line. The first 100 miles must be constructed before the second 100 miles could be

fairly begun. Today the Northern Pacific is paralleled for many miles by the Chicago, Milwaukee & St. Paul, so that men, supplies, and materials of all kinds can be delivered at many points along the entire line. This renders it possible to prosecute the work simultaneously at many points and very much reduces the total construction period.

An examination of the history of the construction of many pieces of railroad shows that when construction has been begun and prosecuted continuously the monthly expenditures are distributed with comparative uniformity over the entire period. As already suggested, construction is frequently delayed and interrupted from various causes, and there are certain sections of the country in which, owing to climatic conditions, construction is necessarily for the most part suspended during a portion of the year, but considering the country as a whole it may be said that expenditures are about evenly distributed throughout the period of active construction.

If, therefore, it were to be assumed that interest should be reckoned upon every expenditure from the day when it was made to the day when the road is opened for operation, it would be correct, disregarding interest on interest, to compute interest upon the full amount for one-half the construction period.

It has been felt, however, that it ought to be postulated that the carrier as it enters upon and proceeds with the construction of its property should have on hand a certain amount with which to meet its expenditures in advance of the exact day when they mature, and it has seemed reasonable to assume that at the beginning of each six months the carrier has available sufficient funds to cover the expenses of that period. This would mean that funds would be furnished the carrier three months upon the average in advance of their expenditure and that interest should be computed for one-half the construction period plus three months.

It is felt that this will include interest on expenditures made during the preliminary period the amount of which, as already suggested, is insignificant in comparison with the total outlay.

312 There is also an item of interest on interest which increases as the length of the construction period lengthens, but it is believed that the interest which the carrier should obtain upon its cash balances in bank ought to be sufficient on the whole to offset this item. Interest is therefore computed upon the road accounts, except land, and upon general expenditures, except interest during construction for one-half the period of actual construction plus three months, and upon equipment in ordinary cases for three months.

The construction program adopted does not contemplate any commercial operation of the railroad during the assumed reproduction period, and therefore no sum is to be estimated either as a debit or credit balance for Account No. 40, revenues and operating expenses during construction.

Distribution of Property Between States.

The valuation amendment requires the Commission to "show the value of the property of every common carrier as a whole, and separately, the value of its property in each of the several states and territories and the District of Columbia, classified and in detail." The engineering report does not deal with value proper and the above requirement is construed to refer to the cost and other facts with respect to the property with which that report does deal.

A large part of the physical property of a railroad is fixed. This is true of its roadbed and its buildings of all kinds. As to the location of all this property no doubt can exist.

Certain other property is movable and might be carried from state to state, but in fact its use is ordinarily confined to one place. Of this, roadway small tools and shop tools furnish illustrations. While they might be and sometimes are used interchangeably in different states to a very limited extent, their use is ordinarily confined to a single locality. Property of this sort is clearly located in the state where it is used.

All property of the above classes is included in the road Accounts Nos. 1-47 and no property embraced in those accounts can be fairly regarded as having a situs in more than one state, except Account No. 37, roadway machines. These machines, usually mounted on wheels, can be readily transported from point to point over the line, but here again in actual practice their use is generally confined to the limits of a particular state when the length of line in that state is considerable. On the whole, it has seemed well enough to treat all property embraced in these road accounts as having a definite situs in that state where it is ordinarily used.

It will be remembered that the inventory is made by valuation sections. No valuation section is ever allowed to extend
313 across a state line. If, therefore, all valuation sections in a given state are summarized, the summary exhibits the total fixed property found in that state and the various inventories exhibit the details of that property. Overheads reckoned in percentages, as previously described, are applied by states and are embraced in the summary so that the total cost of reproduction new and reproduction less depreciation is given by states as to the property embraced in the road accounts and also as to general expenditures.

The equipment of a railroad is readily interchangeable between different parts of its line and it is habitually so interchanged. Its engines are usually confined to its own line, but freight cars habitually, and passenger cars frequently, pass onto the lines of other carriers. This equipment has, therefore, no situs dependent upon its use.

To the above rule there are some exceptions. A switch engine, for example, is ordinarily employed, for a considerable period at least, in the same yard. The type of an engine may designate it for a particular use which as a practical matter confines that machine to

one state, but on the whole it seems necessary to treat equipment as a thing without location.

Instances will frequently arise where the use of floating equipment, Account No. 56, and possibly of motor equipment, Account No. 55, may fix the situs of the property, but, broadly speaking, nothing included in these equipment accounts has a location in any particular state and can only be assigned on some arbitrary basis.

The language of the act is "property in each of the several states, etc." Literally interpreted, the Commission is by this required to show the property located in a particular state. If the property has no location it does not fall within the requirements; that is, the Commission is not required to create, nor would it be justified in attempting to create by any arbitrary rule, a location which does not in fact exist. It has been determined, therefore, not to attempt to allocate by states property embraced in the equipment accounts, but to report that in one item as nonassignable.

The correctness of this conclusion is confirmed by the reflection that any distribution of equipment must be made by some standard varying from year to year and not ascertained or ascertainable by the observation of our own engineers. Such distribution must depend upon use; that is, upon engine-miles, car-miles, ton-miles or some other statement of movement either with or without the loading. A distribution on this basis would not be permanent, and the information itself must be derived from an examination of a class of records which are not the subject of investigation in any branch of the present undertaking.

314 Much more troublesome is the suggestion that the value of certain important structures ought to be distributed to portions of the property in states other than that in which the structure itself is located. The passenger terminal of the Pennsylvania Railroad in New York City well illustrates this. Here was an expenditure on Manhattan Island of more than $100,000,000, although but a comparatively few miles of the Pennsylvania system are located in the state of New York. That station really benefits the entire Pennsylvania system. It was built for the purpose of enabling that system to take a more commanding position in the handling of passenger traffic between the east and the west. If a passenger takes the Pennsylvania lines from New York to St. Louis because of the existence of this station when otherwise he would have gone by some different route, the Vandalia benefits from that fact as much as do other parts of the through line in proportion to its earnings. When, however, any basis for such distribution is sought, the impossible nature of the problem of distribution appears, and above all the express language of the act seems to forbid. This station is in the state of New York and should be so reported.

Carriers frequently own small amounts of property located off the line in states through which the railroad itself does not run. Furniture in an off-line office would afford an illustration. This property is collected in one item and reported as nonassignable. A schedule of such property showing its location appears in connec-

tion with the engineering report, but no attempt is made in the report to distribute the items among the different states.

While a literal interpretation of the language of the act might call for an assignment of this property to the state in which it is in fact located, it has been thought that a practical and sensible interpretation of the act would not so require. If it is desired to know exactly where this property is, the detailed schedule can be consulted.

The Land Section.

The property of a railroad company may consist and usually does consist both of that which is used for transportation purposes and that which is not devoted to the public service but is strictly private property. The valuation act requires the Commission to report the entire property, both that which is used for transportation purposes and that which is not. The former is usually denominated carrier, the latter noncarrier.

The property of the carrier may again be divided into physical and nonphysical, the latter consisting of stocks, bonds, cash, etc. The engineering section, as already stated, deals with the physical property which is devoted to transportation purposes with
315 the exception of land. The land section deals with lands and, in case of noncarrier property, with all structures upon or connected with the land, including noncarrier structures upon carrier land.

The Commission is required to report the original cost and present value of noncarrier lands. In doing this the land and the structure are treated together. In no other way could a correct value be determined, for it often happens that the value of the land represents the entire value of land and structure, the structure not being of a character suited to that place, and, upon the contrary, it may sometimes happen that land and structure together are not worth what the structure alone cost or what it would cost to reproduce the same. The land section may call upon the architects of the engineering section for assistance in valuing the structure, but the total value is not ascertained by adding together the reproduction cost less depreciation of the structure and the value of the land. What is reported is the market value of land and structure as they stand.

It will be seen, therefore, that the first step in the land appraisal is to determine what lands are used for transportation purposes and what are not, and this frequently involves questions of much difficulty. The act requires that lands "owned or used for the purposes of a common carrier" shall be classified as carrier. Does this word "owned" refer only to lands which are owned by a carrier and used by it or some other carrier for transportation purposes or may a carrier own for transportation purposes lands which are not actually used for such purposes; in other words, can lands which have not been in fact devoted to common-carrier use be classified as carrier lands?

One of the most serious difficulties with the present railroad situa-

tion is lack of proper terminal facilities. Railroad managers have not foreseen and properly provided for that great development of business which has not only rendered existing terminals inadequate, but which frequently renders it necessary to entirely discard such facilities and provide new ones in different locations. Owing to the great increase in the price of city lands it is usually extremely expensive to procure the land rights needed for this development.

Any rule which would discourage railroads from exercising proper foresight in the purchase of lands which will be needed for terminal facilities in the future development of their properties would be most unfortunate, for it would not only tend to prevent the providing of the requisite facilities when necessary but would much increase the expense of those terminals when provided. At the same time to give to a carrier the unlimited right to purchase and hold at the expense of the public lands in the vicinity of growing towns upon the belief that possibly at some time and in some way
316 such lands will be needed for railroad purposes opens a door to much extravagance and holds out an inducement to unfortunate investment. This appears from instances which have come under the observation of the Commission in the prosecution of its valuation work. While a liberal rule should be adopted, there must be some limit to the right of a carrier to hold or own land for transportation purposes at the expense of the public.

The rule adopted has been that lands not devoted to the public service in fact may be classified as common carrier, but this shall be done only in those cases where the public use is either actual or imminent. By "imminent" is meant that the possible use must at least be capable of definition. It is not necessary that the lands be put to this use in any definite time after their purchase, but the carrier must be able to point out with reasonable clearness the probable future use which is to be made of them. If the carrier asserts that the lands were purchased in good faith, believing that they would be required for carrier purposes, the presumption will be in favor of the carrier, but nevertheless the carrier must be prepared to state the reason upon which its belief is founded and if the reason is found untenable the land is classified as noncarrier.

It sometimes happens that the amount of land which is devoted by the carrier to a particular use appears to be excessive. For example, several acres may be used for station ground when a much less quantity would suffice. The judgment of the carrier is usually accepted. If the land is presently used for carrier purposes the reasonableness of the extent is not questioned. Only in very plain cases would the limits fixed by the carrier be changed.

Carriers frequently permit the erection upon portions of the right of way of structures which are of a quasi-transportation character. Instances are milk sheds, grain elevators, coal chutes, etc. While these structures are owned by private parties, they perform a function of the carrier itself in that they provide a means for the receiving, storing, and handling of freight. A rental is sometimes paid for the use of this land, but this is seldom so, and often when money

is paid the amount is nominal. In such cases the Commission has classified the land as carrier. Where the dominant use of the structure is private, as in case of a flour mill or a wholesale grocery store, the rule is otherwise.

Carriers sometimes provide dwellings for employees. Where the situation is such that the employee can not be properly housed without the providing of living accommodations these are treated as a part of the operative property and so classified, but where the employee could readily obtain accommodations without the as-
317 sistance of the carrier dwelling houses and structures of this sort are classified as noncarrier.

It is evident that while certain general rules may be laid down for the classification of lands between carrier and noncarrier use, much depends upon the circumstances of each individual case. The carrier is permitted and requested to state its position in every case and the presumption, as already stated, is always in favor of the judgment of the carrier when that appears to have been exercised in good faith. The rule with us in classifying carrier lands has been much the same as is the rule of the courts in permitting the condemnation of lands for carrier purposes.

Carrier Lands.

Paragraph "First" of the valuation act requires the Commission to report original cost to date, cost of reproduction new, and cost of reproduction less depreciation of each piece of property owned or used by a common carrier for its purposes as a common carrier. If this paragraph stood alone it would clearly impose upon the Commission the duty of reporting the cost of reproducing the operative lands of the carrier.

Paragraph "Second" enumerates in detail the things which are to be reported as to the operative lands of the carrier. It is a maxim of statutory construction that a general provision may be modified by a particular provision in the same statute and when these two paragraphs are considered together it seems evident that all the facts as to which Congress required a report touching the right of way of the carrier are enumerated in paragraph "Second." If this is so, the Commission is not required to report in terms the cost to the carrier of acquiring at the present day its common-carrier lands.

This, however, is not of much practical importance, for paragraph "Second" requires the Commission to report, if not the cost of reproduction, at least what amounts to the same thing. That paragraph, which may for convenience be repeated here, is as follows:

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

The meaning of the first part of this paragraph is plain. The

Commssion is required to state the original cost and the present value of all carrier lands. The meaning of the last provision is obscure.

It has been suggested that the purpose was to obtain a statement of the expense to the carrier of acquiring these lands aside
318 from what was paid the landowner; that is, the cost of legal fees, of salaries of real estate agents, of recording deeds, etc. But these facts, when ascertained, would not be of much significance, and such an interpretation entirely ignores the word "damages," which must also be reported. It is hardly supposable that this alone was what Congress intended.

The right of way of a carrier is frequently donated, but in so far as the carrier must acquire this by purchase or condemnation the cost generally exceeds the acreage value of the lands taken. This is partly due to the peculiar shape of the piece acquired and partly to other causes. This excess cost to the carrier is a thing of importance in the actual production of its railroad, and the carrier claims that it ought to be given weight in the estimate of reproduction. Evidently this was the fact for which Congress intended to inquire. What did it cost and what would it now cost the carrier to procure its right of way and other operative lands in excess of the market value of such lands by the acre?

If this construction is correct, the Commission is required to report as to the operative lands of a carrier the following facts:

1. Original cost.
2. Present value.
3. Cost of procuring right of way in excess of acreage value at the time of dedication to public use.
4. Cost of procuring right of way at the present time in excess of present acreage value.

Other portions of the act require certain other facts as to donations, land grants, etc., but these may be disregarded for the present.

With respect to the above items, the Commission is now reporting as follows:

1. *Original cost.*—Every effort is being made by the carrier and by the Commission to ascertain and report the original cost of lands. The carrier is required to make return showing such cost in detail and this return when received is carefully examined and verified by the accountants of the Commission. The records of the carrier, county and municipal records, court records, and any and every source of information which tends to show what the carrier did actually pay for its right of way are consulted. If it is impossible to show from the records of the carrier or from any other source what the carrier did actually pay for these lands at the time they were originally acquired, no attempt is made to estimate such original cost. In some of the earlier valuations such an attempt was made, but the result was clearly valueless and a moment's thought will show that this must inevitably be true. It is difficult to determine after a lapse of from 10 to 50 years the acreage value
319 of the right of way at the time it was acquired. The sources of information which are available upon this point are man-

ifestly of doubtful accuracy. This, however, is not the most serious objection. The lands of a carrier were sometimes donated, sometimes purchased, sometimes condemned. In the absence of records there is nothing to show the proportion in which lands were acquired by these different methods. Even if it were known that a particular parcel was purchased it would be impossible to determine the purchase price even though it be assumed that the market value of adjacent lands is correctly known, for it abundantly appears from observation and from testimony produced by the carriers that the price actually paid is not determined by the market acreage value, being usually more but sometimes less. So of condemnation; without a record of the facts it is impossible to say what damages may have been paid.

Plainly, an attempt to estimate original cost would in many cases involve, not the exercise of good judgment but rather of pure speculation. The Commission has not felt justified in expending time and money in an attempt to make these estimates when they would be not only valueless but absolutely misleading when made.

Several perplexing questions have arisen in attempting to show original cost as above, some of which may be briefly referred to.

Carriers frequently purchase an entire tract, use that portion which is required for carrier purposes and either dispose of or retain as noncarrier land the balance. What shall be reported as the original cost of the carrier portion?

The first thought was to divide the cost of the total parcel upon the basis of relative areas; that is, to inquire what was the area of the carrier portion and what the area of the noncarrier portion, and to distribute the cost of the whole in proportion to these relative areas. An attempted application of this rule showed an entirely inaccurate and misleading result, for the reason that in some instances the portion used for carrier purposes was very valuable while the balance was of little value, while in other cases exactly the reverse was true.

The second suggestion was to determine the relative value of the two parcels at the time of the purchase and to divide the original cost of the whole accordingly. This involved the practical difficulty of going back to the time of acquisition and determining the value of the two parcels and this difficulty in actual experience seemed almost insurmountable. But beyond this was the further objection that when determined the result was wrong, for the reason that it entirely ignored the element of severance damages. If the carrier had purchased the portion used for right-of-way purposes by itself it would have paid more than the acreage value; indeed, it is
320 for the purpose of escaping the payment of an unreasonable excess of this kind that the entire tract is purchased. To treat, therefore, as the original cost of the right-of-way portion its market value would not accurately represent such cost.

The following rule was finally adopted:

In case the noncarrier portion had been sold previous to the date of our inventory the original cost of the carrier portion was determined by adding to the original cost of the entire parcel in-

terest, taxes, and any other expenditures shown to have been made and subtracting therefrom whatever the carrier had received for the portion sold. This result is not accurate, and in some cases the increase in value of the noncarrier portion between the date of acquisition and of sale has been such that the original cost of the carrier part is nothing, but the figure so reached does represent the money cost to the carrier as the result of the entire transaction.

Where the noncarrier part is still retained by the carrier, the accountant does not ordinarily attempt to distribute the original cost but reports the cost of both carrier and noncarrier treated as one parcel; that is, he divides all lands into three classes—

(1) Carrier lands; that is, those where the entire parcel is used for carrier purposes.

(2) Noncarrier lands, where the entire parcel is noncarrier.

(3) Parcels of which a portion is carrier and a portion noncarrier.

The original cost of each class is shown. Ordinarily the third class is not large, but is sometimes considerable. This method has the advantage of reporting the exact fact, so that the figures given are exactly what they purport to be.

The consideration in the deed does not always represent the amount paid for the land. It frequently happens that a nominal consideration is recited while an actual consideration is paid, and sometimes, although seldom, the consideration named exceeds the actual amount. The rule adopted is to disregard the consideration named in the deed and report the actual consideration when this can be ascertained either from the books of the carrier or from any other source. If there is nothing to show that the actual consideration differs from the recital, then the amount named in the deed is accepted as the actual consideration.

The Commission's accountants in their reports distinguish, however, between those cases in which the actual consideration is known and those in which it is presumed from the recital of the deed. The tentative valuation shows as donations all lands conveyed for a nominal consideration as above, but by looking into the report of the accountants it can be determined just what portion of the donations were so conveyed. It has been felt that it was highly im-
321 portant in all matters of original cost to report facts and not presumptions or estimates. Where it has been necessary to include a presumption in the final summary, it has been the endeavor to show at some previous stage to what extent the presumption has been made.

It sometimes happens that the carrier obtains its right of way upon some other consideration than the mere payment of money. It may, for example, contract with a farmer to provide a cattle pass or an overhead crossing, or a municipality may accord the right of use in its streets upon condition that the carrier shall construct viaducts. In all these cases the cost to the carrier is treated as part of the cost of its right of way where the expense would have been carried into Account No. 2 in the construction of the road, and is not so included in those instances where such expense would have been distributed among the other accounts.

2. *Present value.*—Present value as reported by the Commission is nearly synonymous with market value. What is done is to ascertain the number of acres of carrier land, to determine the market value of similar land adjoining or in the immediate vicinity per acre, and to apply that price to the number of acres. If the land has any special value for railroad purposes that is also taken into account.

For the purpose of determining this present value the Commission sends into the field its land appraisers, who make a personal inspection of the property and ascertain certain facts which bear upon the value. The right of way is first divided into zones, and each zone contains lands of substantially similar character and value. Every zone is continuous from one end to the other. The appraiser having laid out his zone next proceeds to determine the market value of adjoining and adjacent lands. For this purpose he collects all recent sales which he can find of similar lands in the immediate vicinity. He also ascertains the assessed value of such lands and finally takes the opinion of different classes of well-informed persons as to such value. From a consideration of all these sources of information he determines the unit or market value.

The work of the land appraiser involves an inspection of the land to be valued. In some instances where desert lands are under appraisement which have either little or no value, and where one mile is like every other mile, an inspection has been made from a moving train, but in nearly all instances the appraiser walks over the land to be valued and spends a considerable amount of time in inspecting similar lands, in identifying those lands for which he can obtain sales and assessments, and generally in forming an opinion of the value. Where the land under appraisal is
322 city land and of considerable value, a great amount of time is often expended, particularly in the obtaining of sales and assessments.

Chartered municipalities having a population of over 2,500 are treated as cities, and all lands within such limits are reported as urban. All other lands are reported as rural.

3. *Excess of original cost over market value at time of acquisition.*—No attempt is made to show this excess, for the reason that the Commission has felt it to be practically impossible to do so. The report of the accountant indicates those parcels which have been donated and those which have been purchased. Frequently several lots are embraced in a single deed for a single consideration. With respect to such parcels it is possible to give accurately the original cost of the whole but not of the individual parcel.

There are many instances where the amount paid the land owner for the parcel is known, but there are certain general costs considerable in amount incident upon procuring the right of way which can not be allocated to individual parcels. It is difficult, therefore, to give the exact original cost of any one parcel, although such cost of the entire right of way can be stated with accuracy.

To show excess of original cost over market value it would there-

fore be necessary to take each individual parcel and show with respect to it the fair market value of the land, combining the results into an aggregate and comparing this with original cost as shown by the records. This was actually attempted in one or two instances and it was made evident from that experience that the result could not be relied upon. To do that with respect to every parcel would involve an enormous amount of work without any beneficial result so far as we could see. The Commission has therefore felt justified in treating as practically impossible a compliance with this requirement of the statute.

4. *The cost of acquiring at the present time the right-of-way lands of a carrier in excess of the acreage value.*—This sum is not reported for the reason that in the opinion of the Commission an attempt to report it would be practically impossible.

As interpreted by the carriers, the Commission is required to take every individual parcel which the carrier must acquire if its road were obliterated and the right of way were to be repurchased, and to determine the cost of acquiring the right of way across that parcel in addition to the base or acreage value of the land used. This would be equivalent to what is done by a railroad in originally procuring its right of way and would involve a consideration of all those elements which determine the amount of the damages. The use of the parcel, the extent to which that use would be interfered with, its value before and after that railroad has been constructed,
323 and the almost numberless considerations which enter into the determination of that question must be considered. An inspection and a study of each individual parcel must be made which of necessity would be more minute and exhaustive than the study which is made in determining the acreage value.

In answer to the objection that this kind of an appraisal would be in the matter of time and expense prohibitive, the presidents' conference committee, representing all the principal carriers in the United States, attempted to show the Commission how it should be done. The road selected was the Texas Midland, about 112 miles in length. Two men were selected who had no special knowledge of lands along this railroad, who were stationed upon the rear end of a passenger coach and provided with a map showing the parcels as they were originally acquired. The train proceeded at its ordinary rate over the length of the line. From this inspection these gentlemen undertook to state parcel by parcel the excess cost of acquisition and the damages. A computation showed that less than one minute could have been devoted by them to the inspection and determination of these excess costs and damages as to each parcel. The proposition that the Commission could make a report under any such method as this is too fantastic for serious discussion.

If the Commission is to report this fact and if its report is to be of any value when made, it must ascertain the fact by a detailed analysis of the damages in case of each parcel. The present force of the Commission is not qualified without further instruction, to do that work in a satisfactory way. Estimates have been made of the

additional cost, but they are not reliable. It can only be said that the expense of our land work would be very largely increased.

It should be noted among other things that these values are to be reported as of the present time. The location and extent of the parcels must be considered, therefore, not as they existed when the railroad was built, but as they exist to-day. In case of older roads there have been very important changes in the size and frequently in the use of these parcels, so that the first requisite would be a resurvey of the road and an accurate determination of the parcels to be condemned. This of itself would involve a large outlay on the part of either the railroad or the government.

The real infirmity, however, of any report of this character lies in the fact that it would not express the fact but would of necessity be utterly misleading. The real question is as to the cost to a particular railroad of procuring its right of way at the present time if it were obliterated and were obliged to reacquire its operative lands. The answer to this question depends upon considerations and elements which the Commission can by no possibility determine with accuracy, and for this reason the question itself can not be answered.

324 When the railroads of this country were constructed, considerable portions of their right of way were donated. If a railroad were to be built to-day, a considerable portion of that right of way would be again donated. The amount of such donations would depend entirely upon the location of the railroad and the general attitude of the section through which it was to be located toward the project. The communities to be served might so desire the construction of the road as to be willing, by way of inducement, to donate the entire right of way. Upon the other hand, it has been found, in cases of new construction, that in some instances the building of the road has been opposed by landowners who have insisted upon the last penny. To determine, therefore, what amounts would be donated and what must be acquired by purchase or condemnation is utterly impossible.

But, assuming that all lands must be purchased or condemned, an entirely unwarranted assumption, very much still depends upon the attitude of the community, upon the character of the real estate agent who negotiates for the property, and upon many other things which can not be known or estimated. It is altogether impossible to say, even after the most careful consideration, what it would cost to reacquire this right of way. Of course a figure could be named, but that figure, for all practical purposes of valuation, would be meaningless.

It can not be denied that frequently the cost to a railroad of acquiring its right of way with respect to parcels which must be purchased materially exceeds the acreage value of the land taken. Previously to the decision of the Supreme Court in the Minnesota Rate Cases it seems to have been understood by many commissions and valuators that the proper method of determining the present value of the operative lands of a carrier was to inquire what it would cost

to acquire those lands upon the basis of present prices. For the purpose of determining the excess of such cost over acreage value many studies were made of pieces of construction where the known cost could be compared with the acreage value, and from these investigations were deduced percentages which varied for rural right of way from 150 to 300 per cent, being less in case of city lands.

It would be possible for the Commission to investigate along these same lines and to report something in the nature of an average percentage, but such a figure would be of little or no significance as applied to individual railroads, and would be tantamount only to a general statement that there is such additional element of cost which usually falls within certain limits. The Commission has not felt that this would satisfy the requirement of the statute, and has be-
325 lieved, as already stated, that it was practically impossible to report the fact called for.

Since the enactment of the valuation act the Supreme Court of the United States has decided the Minnesota Rate Cases, and that decision apparently would render immaterial the finding asked for even if it could be made.

Two views were earnestly contended for before the court in those cases. It was urged by the state that the proper measure of the value of the right of way of a railroad was original cost. It was insisted that these lands had been taken by leave of the government under the power of eminent domain, and that if the carrier was allowed all it had originally paid but nothing for the unearned increment, that was strictly just. This view was rejected by the court, which held that the carrier was entitled to the value of these operative lands at the time.

The carriers contended that the proper measure of the value of their carrier lands was what it would cost to acquire those lands at the present time under present prices. This contention was also explicitly rejected by the court, which declared that while cost of reproduction as applied in a reasonable way to certain parts of the plant of a railroad might be helpful in determining its value, it was utterly out of place as applied to lands.

An examination of the opinion of the court indicates that a real objection to the use of the reproduction method in determining the value of lands lay in the fact that by that method the carrier was given the benefit not only of the increase in the value of these lands but in addition a multiple of that increase. A simple statement illustrates this fact. Assume that Road A was constructed 10 years ago and that the cost of acquiring its right of way was twice the acreage value. Let it be further assumed that the acreage value of its lands at the time of dedication to public use was $25 per acre, and that today this has increased to $50 per acre. Plainly, the original cost to this carrier was $50 per acre and the cost of acquisition to-day would be $100 per acre. The landowner adjacent to the right of way benefits by $25 per acre, while the carrier benefits by $50 per acre.

It can not be questioned that the rule of the court would deny up to a certain point to the carrier any benefit from increase in the

value of its lands. That would be so in the illustration above cited. Not until the increase in acreage value had come to equal the original cost to the carrier would the carrier get the advantage of the unearned increment. To give the carrier the exact benefit of any increase in the value of its lands it would be necessary to know the difference between the original cost and the acreage value at
326 time of acquisition and to add that sum to the present acreage value; but this fact in the majority of cases can not be ascertained.

It should be still further noted that in some cases the increase in acreage value has not been sufficient, so that the present value equals the original cost, and it is urged that in such case under the rule of the Commission the carrier would be required to accept as the value of its lands a sum less than it had actually expended in acquiring them.

The Commission reports in all cases the present acreage value of the lands; those lands which have been donated; the original cost of those lands which were purchased. In cases where the original cost is greater than the present value the Commission will inquire whether there has been a decline in the value of lands and whether there is anything to indicate an unnecessary or unwarranted expenditure of money in the acquisition of the right of way. It is believed that these facts are all that can be required to determine the fair value of the operative lands of the carrier at the date of valuation.

Streets and Highways.

Several questions are presented in case of the occupation of streets and highways by carriers for carrier purposes.

1. It frequently happens that a railroad is in exclusive possession of what was at one time a street or alley. This usually results from some arrangement between the municipality and the carrier under which the municipality passes an ordinance vacating the street or alley; that is, discontinuing the public use of the same and giving to the carrier the sole and exclusive use. The carrier upon its part usually does something in consideration for this grant, like the opening of a new street, the building of a viaduct, etc.

Ordinarily the municipality has no title to the land over which a street or alley is located. Upon the abandonment of the use of the street or alley the land reverts to the original owner. In such cases the municipality has no title which it could convey to the railroad since its only right is one of use which terminates when the use ceases. Still, cases are found upon almost every railroad where the carrier can exhibit no other title to this land than the ordinance of the municipality. In some instances it has acquired title to the adjoining lands and has therefore become the owner to which the land occupied as a street reverts, but this is by no means an invariable condition. The Commission has felt that in all cases where the carrier is in the actual and exclusive possession of property formerly occupied as a street, and is using the same as a part of its operative property, it should be credited with the same as though owned by it, unless it affirmatively appears that the carrier is not the owner.

327 2. Most questions as to streets and highways arise where there is a joint occupation by the public and the carrier. The longitudinal occupation of the street, while not perhaps in essence different from the crossing proper, presents a somewhat different question and may be first considered.

A municipality by ordinance often permits a railroad company to lay and maintain its tracks along a public street. These tracks are sometimes carried over the street, but are usually placed upon it at grade. The public uses the entire street, including that portion occupied by the tracks of the railroad. Under these circumstances the carrier insists that that portion of the street which is actually occupied by its tracks—that is, the portion between the rails and for a distance on either side of each rail—is land owned or used by it; that the area of this land should be computed and its value determined. The Commission has not accepted this view. It has assumed that if the road were to be reproduced to-day the same arrangement would be made with the muncipality which was in fact made. If under that arrangement the carrier pays anything for the privilege, it is allowed that amount; if it pays nothing, nothing is allowed.

The carrier contends that it uses certain defined land, but in fact the grant carries with it no land or the right to use any specific land. The municipality has no land in which it could grant any such interest. The privilege is strictly analogous to the franchise right of telephone, electric light, and gas companies to maintain poles, wires, gas mains, etc., along the public street.

Whether such franchise rights are an element of value upon which the carrier is entitled to earn a return has been the subject of much controversy before the courts. The present trend of authority seems to be decidedly in favor of the proposition that such a privilege can not be made the basis for earnings beyond the amount which has been paid for the same. If the government takes away the privilege it must compensate the carrier for its damages resulting from the loss, but so long as the privilege is continued it can not be made an element of value upon which the carrier is entitled to a return. When the public grants to the carrier the right to maintain its tracks along a public street it in essence assists the carrier to that extent in the discharge of its public duty. Certainly the public ought not to be taxed by reason of and in proportion to the assistance extended.

It may be further noted that if the privilege were to be taken away from the carrier by the government the value of the land occupied by the tracks of the carrier would in no sense be the measure of its damages.

In some states, and perhaps in most states, the laying of a railroad track under municipal authority imposes additional servitude
328 upon the property occupied by the highway for which damages may be demanded by abutting landowners. To the extent that such damages have been in fact paid they are added to the amount paid the municipality.

3. The crossing of streets and highways by railroads differs from the longitudinal occupation in that the carrier sometimes owns the fee of the land occupied in common. This is not generally so in

case of city crossings. The lot is usually bounded by the street. The number of square feet in the lot embraces no part of the street. If the railroad buys such lot in securing its right of way it does not thereby acquire any interest in the street upon which it abuts. The right to cross must be granted by municipal ordinance and this ordinance does not purport to convey land or an interest in land.

It might happen that the carrier owned the land before it was plotted, in which event the title would still rest in the carrier provided it had a title in fee, which it sometimes has and sometimes has not. But the laying out of a street through a parcel of land usually enchances the value of the remaining land by more than the acreage of the street; that is, the lots will sell for more after the street is established than the whole parcel would have sold for before. Since the present value of railroad lands is determined by the value of adjacent and adjoining lands, it follows that the enhanced value of these abutting lots when applied to the lands of the railroad which are not included in the street is more than the value of the entire land before the street was laid out.

The question presented by the country highway crossing is not equally clear. In many states the title of the land only goes to the center of the highway. If the railroad buys a right of way through a parcel and takes title in fee, it owns that part of the land underlying the highway which is used by it and the public in common. It may also happen that the highway has been laid out over the railroad in which event the railroad would own either the use or the fee in the parcel of land used in common.

Ordinarily a railroad can not take under the right of eminent domain a fee to the land; it secures merely the right of use, and when the use terminates the land reverts to the original owner. In some states a railroad corporation can not take by deed a right more extensive than it could acquire by eminent domain, but in most states it may acquire by deed title in fee. The right of way of the carrier sometimes consists partly of lands held in fee but usually of lands in which the carrier has merely the right of use. In our work no distinction is attempted between title in fee and right of use, all operative lands being treated as though owned in fee.

329 If a railroad purchases the right of way across a parcel of land, it does not necessarily thereby obtain the right to cross a public highway which has been laid out through that land even though it may in theory take title to the land which underlies the highway. It can only obtain the right to use the public highway by some sort of statutory authority.

It is also true that the laying out of the highway adds to the value of adjacent and adjoining lands, although not perhaps in the same direct and invariable manner as does the laying out of a street. To the extent that adjacent lands where benefited, the carrier has that benefit in the valuation of its lands.

As a practical matter it is impossible to consider every street crossing and country-highway crossing by itself. Some general rule must be adopted. If the carrier is treated as the owner in fee of all of its operative lands, and if it is credited with the full value of

exclusively occupied land included in vacated streets except when it affirmatively appears that it is not the owner, is credited with land jointly used with the public in highways outside of municipalities unless the carrier's lack of ownership affirmatively appears, and if no part of streets in municipalities used jointly with the public is included unless the carrier's ownership is made to appear affirmatively, practical justice will be done. Such is the rule which the Commission has approved.

Rights in Lands.

Carriers frequently enjoy for operative purposes rights in land of which they have neither the ownership nor the exclusive use. Examples are the right to take water from a spring, to maintain pipes through which the water is conducted to the right of way of the carrier, the right to maintain a tunnel underneath lands the surface of which is used by the owner. These rights divide themselves into two general classes, those in the public domain and those in private lands.

1. *Rights in the public domain.*—By public domain is meant not lands which are owned by the public, but rather those lands which can not be reduced to private ownership. Of this the best and most frequent illustration is afforded by navigable waters and riparian rights in the same. Such waters belong to the public and can not be granted to private individuals, although the privilege of using the same may be accorded to private parties. Riparian rights sometimes can and sometimes can not be reduced to private ownership.

Rights of this kind are treated like the right to use streets jointly with the public; that is, the report shows what has been paid for the privilege and nothing more. The reasons which have
330 led to the adoption of this rule are substantially the same as those already stated with respect to the joint occupation of a public highway. The privilege of use accorded by the superior authority is analagous to a franchise and should be treated in the same manner.

2. *Rights in private lands.*—By private lands are meant all those lands, including waters, which can be reduced to private ownership. Lands owned by a state or a municipality which could be sold and conveyed would be regarded as private lands. Such rights are appraised at their present value irrespective of the cost to the carrier.

The Accounting Section.

The Commission's accountants deal with the records of the carrier, and the report of that section embraces everything called for by the act which is derived from an examination of the books of account and other records and documents. Among the subjects handled one of the most important is original cost to date.

Original Cost to Date.

The paragraph of the valuation act entitled "First" provides that the Commission "shall ascertain and report in detail as to each piece of property owned or used by such common carrier for its purposes as a common carrier, the original cost to date, * * *."

As the act is interpreted by the Commission original cost is a fact, to be determined from the best evidence available in each case. The cost of reproduction new is of necessity an estimate, for the property never will be reproduced in fact and the exact expense of reproducing it can not, therefore, be known. Depreciation is necessarily an estimate, for there is no way in which the exact amount of deterioration can be known. But these properties have been actually produced in the past and their production has cost a given amount of money. Original cost can, where the records suffice therefor, be exactly known, and it is in that sense that these words are understood by the Commission.

Investigation shows that original cost is frequently, indeed almost invariably, more or less than a fair average cost. Many causes contribute to this result. Poor judgment may have been used in the planning and the executing of the project; accidents may have intervened; an unusually wet season may very much increase the cost of certain construction work; there may have been extravagance or even dishonesty; and all this would increase the expense above normal. Upon the other hand, all conditions may have been extremely favorable, and in consequence the work may have cost less than a
331 fair average. The Commission in its report does not inquire what the work ought to have cost.

This fact is ordinarily ascertained from an examination of the books and records of the carriers, but other sources of information may be resorted to provided they indicate the fact. For example the available records of contractors that built the property are examined; records of reorganization committees and syndicates are studied; reports of state and federal bodies and the records of court proceedings are reviewed. In some instances valuable information has been ascertained from authentic publications dealing with the early history of the property. This course is pursued only in case where the records of the carrier are missing or deficient with respect to the expenditures for property. The search is for the best evidence of cost. If the fact can not be determined within reasonable limits of accuracy, from evidence which carries with it a fair degree of certitude, the Commission so reports.

It sometimes happens, usually in case of equipment or of land, that the major part of the cost is known, but that some betterment in case of equipment or some additional expense in case of land can not be located. In the case of equipment it is possible to ascertain the cost as a rule. In some cases the cost of betterments can not be ascertained. In the case of lands more difficulties are encountered. The records of land costs are frequently incomplete and it is necessary to resort to the deeds of conveyance to ascertain the record

such costs. In cases of this kind the Commission reports the cost as far as it can be ascertained, indicating as far as practicable what the original cost as reported covers and what is lacking.

The valuation act requires that original cost shall be reported in detail as to each piece of property. This requirement applies also to cost of reproduction new, and in our discussion of the work of the engineering section the meaning given to this phrase was stated. The detail employed in showing cost of reproduction new is usually the commercial unit. The number of yards of grading, the number of pounds of steel in a bridge are given for each valuation section. It has not been found possible to observe the same detail in showing original cost for the reason that the accounts of the carriers have been so kept that while they may show the total cost, they do not distribute it by units of this kind. It also frequently happens that the original cost itself per unit is not at all uniform. For example, the grading upon a particular valuation section may have been done under different contracts, each one of which would name a different price. Ordinarily the Commission states one price for one kind of grading upon an entire valuation section.

332 After considerable investigation the primary account has been selected as the unit by which original cost should be shown, and it is believed that ordinarily this is sufficient for every practical purpose. When, therefore, original cost to that degree of detail can be ascertained from the books and records of the carrier or from any other source, it is stated by primary accounts. When this can be done the information is given by valuation sections and our valuation sections are established with a view to showing original cost when that is possible. If it cannot be shown by valuation sections but can be shown in some more comprehensive manner, as, for example, in the summary of the whole, that is done. In some cases the original cost which is shown by primary accounts is further distributed to the structural unit. When that can be done those facts are so reported.

It sometimes happens that original cost can be shown in this detail for some valuation sections but not for the entire line, and whenever this is possible it is done. Of this the San Pedro, Los Angeles & Salt Lake Railroad furnishes a good illustration. The two terminals of this road, one at Salt Lake City and the other at Los Angeles, were made up of old properties with respect to which original cost could not be shown, but the line connecting the two was of comparatively recent construction, the records of which were in fairly good condition. Here the valuation sections were distributed with particular reference to original cost and the Commission was able to show the primary accounts for all this portion of the road.

When it is not possible to state the original cost by valuation sections, and the Commission can only state it divided between land, equipment, and other costs, it is so reported.

The report of the accountants contains many details of original cost, especially as applied to individual structures, while buildings and bridges of considerable importance which are not referred to in the tentative report nor in the tentative valuation are often shown in

detail. Whoever, therefore, is particularly interested in this subject must look into the report of the accounting section just as he who would know the detail of cost of reproduction and of depreciation must consult the report of the engineers.

It should be noted that the original cost to date reported by the Commission is not always the actual cost of the unit now in existence. The accounting rules of the Commission with respect to certain primary accounts in case of replacement take no account of differences in cost between the thing when replaced and the thing which is replaced. Consider the tie as an illustration. Let it be assumed that the tie now in place is exactly similar in every respect to the tie which was originally installed 25 years ago. That tie cost 50 cents; the present tie cost $1; nevertheless, the original cost of the
333 present tie as carried upon the books of the carrier and in its investment account is 50 cents, which is reported as the original cost. The cost of placing the tie is carried in Account 12, tracklaying and surfacing, which is entirely a labor account. Evidently if the cost of labor has increased the expense of placing the present tie exceeds the expense of placing the original tie, but this difference in expense is not reflected in Account 12, and it does not therefore appear in our report of original cost. Other of the primary accounts are affected in the same way to a greater or less extent. If the purpose is to show what the existing article has cost the stockholders of the company, then the method observed is correct, since the difference between the price originally paid and the present price has been charged to operating expenses.

The act, as already noted, calls for original cost of each piece of property in detail. In response to this requirement, the unit of property is first identified and the attempt is made to locate the cost of that unit. It was finally determined, as already stated, to disregard the individual units and report by primary accounts, thus treating all property of that class as one unit. Under this procedure the accountant begins with the property and allocates the cost when possible. Owing to the manner in which the accounts of railroads were kept down to about 1907, it is difficult to make this distribution of expenditures even by primary accounts.

What can be done and is done in case of lands appears in the discussion of the work of the land section.

For equipment, original cost per unit—that is, per car or per engine—can usually be shown where the age of the unit is not too great. Each article of equipment can usually be dissociated from everything else and treated by itself, and therefore where the additions and changes have not been extensive the original cost as a rule can be shown with exactness.

With respect to the road accounts there have been continual changes involving additions and retirements, but maintaining in many cases the same general structure, which renders the showing of original cost extremely difficult.

It is possible to approach this problem from a different angle. Instead of inquiring what particular pieces of property cost, the Commission may state what has been the total investment in the property

now in being. The Commission's accountants have usually approached the problem from this angle in case of older properties, with more satisfactory results. In showing this kind of original cost the accountant endeavors to determine the source from which the money is derived. It may have been paid in for the issue of securities or upon some other consideration; it may have come from
334 the earnings of the property by appropriating income which might otherwise have been divided as dividends; additions and betterments have often been paid for out of revenues. Whenever the records of the carrier clearly show that a given amount has actually gone into the purchase of property and the source from which this was derived, our report indicates both the amount and the source.

Generally it is possible to know with reasonable accuracy the total amount which has been invested in the development of the enterprise. This, however, may have been expended for property which is not now in existence and does not, therefore, represent the original cost of the property in being. To obtain this result proper deduction must be made on account of retirements. Whenever the fact of the retirement can be located from the records of the carrier and the cost can be determined it is deducted, but in many cases this can not be done. It will be seen, therefore, that this figure will represent before retirements have been written out the total investment in the enterprise; that is, the amount of money which has gone in and no part of which has been taken out as money. When the proper retirements have been made the result is the original cost of the property in existence, assuming those retirements to have been all identified and the original cost properly determined. It is believed that this figure is of great value, but it must not be understood that it precisely represents original cost, for it does not.

Aids, Gifts, Grants, and Donations.

Large contributions have been made both by public authority and from private sources in aid of the construction of our railroads. The act requires an investigation and report upon this subject, which is mainly handled by the accounting section.

Each carrier is required to file a return of its lands showing among other things, with respect to each parcel, the consideration paid. This return is verified by the accountant who examines the books and records of the carrier, not only for the purpose of ascertaining whether the facts stated in the return are supported, but also what other facts may be disclosed. With respect to most carriers donations of land are in this way known with substantial accuracy, although in case of the older roads, especially in the south, where the records were destroyed during the Civil War, it is frequently impossible to obtain the information.

Carriers are also required to file a return showing all aids other than land. The books and records of the carrier are examined by the accountant in the light of this return and whatever they disclose is developed and reported.

335 State commissions have been requested to cooperate in this behalf and several of them have rendered valuable assistance. By these various means many, perhaps most, of the donations by public authority and private individuals are ascertained and reported, but considerable still remains. To discover this would involve investigation of outside sources of information attended by much expense if made at all exhaustive and it has been felt that this would not be justified.

Land grants are treated as a separate proposition, the report covering the total grant, the amount received from lands already sold, and the value of those remaining unsold. This last value is necessarily an estimate.

Corporate History.

In the development of the railroad systems of this country there have been numerous consolidations, reorganizations, leases, etc. The Boston & Maine system, for example, which comprises less than 2,500 miles, involves 167 corporations. The act requires an investigation and report as to this corporate history.

This subject is dealt with by the accounting section. The date of organization of each corporation, what property was constructed by it, what became of that property, and of the corporation itself is recited. The report of the accountant gives a complete picture of the corporate growth of the system from the beginning down to the date of valuation.

In the same connection a full statement is made of all issues of stocks and bonds by each corporation, together with an account of the consideration either in money or in property which was paid for the same. The means resorted to by the carrier for the providing of its funds, the amounts paid in the way of discounts, and, indeed, everything connected with the financial history is fully shown.

It will be seen that the accountant develops whatever facts are contained in the records of the carrier and it is believed that the facts thus developed are of great significance in exhibiting what may be termed the financial equities of each case.

Reasons for the Differences Between Values.

By the act the Commission is required to report not only an analysis of the methods by which the several cost values are obtained but also the reasons for their differences, if any. From what has been stated in this analysis of method, it must be clear that the reasons for the differences in amount between the various

336 cost values reported, i. e., the original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation, are to be found in the essential differences in the nature of the inquiries which must be made in order to ascertain each of those cost values, respectively, based as they are and must be on varying assumptions, attended by varying conditions in which the

actual and the hypothetical are contrasted, and affected by fluctuations and trends in the prices of labor and materials.

337 *Note to Appendix 3.*

Engineering Board Memorandum No. 226 (as Revised November 6, 1915).

Subject: Depreciation of Road and Equipment Property.

The board is of the opinion that the principles contained in the following definitions should govern in determining the depreciation of physical property used for common-carrier purposes:

(1) Depreciation is the lessening in worth of physical property due to use or other causes.

(2) Labor depreciates with the items of property of which it is a part.

(3) Service-condition per cent is the ratio between remaining capacity for service and total capacity for service in each cycle of use.

(4) Depreciation shall be determined by a consideration of observations of actual conditions of the property and mortality statistics of similar property in like use applied where practicable on the straight-line basis.

(5) Salvage is the net value which an article possesses for carrier purposes other than that for which the article was originally used.

(6) Scrap is the net market value which an article possesses after its service for carrier purposes has been exhausted.

(7) Normal life shall be estimated average total service life under ordinary conditions.

When depreciating property under the several accounts, the following general rules shall apply:

(*a*) Ordinarily, service-condition per cent shall be the ratio between the remaining service life and the total service life. When the depreciation of an item of property is based upon the weighted average of the parts, the service condition of each part shall be determined by this ratio.

(*b*) When a normal life for a particular item of property has been prescribed for use in determining depreciation, that life must not be departed from unless an investigation of the records of the carrier or actual inspection in the field, or the two combined, warrant such departure. In no case shall a remaining service life of an item of property be taken at more than the prescribed normal life.

(*c*) When no normal life is prescribed, the total service life and remaining service life shall be determined from observation of actual conditions and the examination of records and data from reliable sources.

(*d*) Salvage and scrap will be allowed in cases where such values actually exist. Whether allowance shall be made in a given case for salvage or scrap shall be left to the discretion of the member of

the engineering board. If an allowance is made, this fact shall in all cases be stated upon the pricing sheet, even though at the time the amount of the allowance can not be given.

(*e*) The service-condition per cent as stated in the field record by the field man shall be subject to revision and final fixing by the member of the engineering board or his staff subordinates. The service-condition per cent fixed in the field is assumed to be simply the statement of a fact.

Account 1. Engineering.

A small portion of the expenditure for engineering is connected with property which depreciates. In view of the fact that the larger portion is expended on location surveys, grading, and other
338 property which does not depreciate, and that the accounting records have been so kept in the past as to make it impracticable to segregate that portion of the expenditure which depreciates, the service-condition per cent of the account shall be considered at 100.

Account 3. Grading.

No allowance shall be made for appreciation or depreciation, as such, to excavation and embankment pay quantities of grading. Other property such as breakwaters, bulkheading, retaining walls, and similar items constructed of perishable materials shall be depreciated.

Account 5. Tunnels and Subways.

The excavation of tunnels and subways, including backfilling, shall not be depreciated. Concrete and other masonry shall be given a normal life of 100 years.

Account 6. Bridges, Trestles, and Culverts.

(*a*) Metal bridges shall be given a normal service life of 70 years, provided that the loads for which they were designed are not now being exceeded.

(*b*) Masonry culverts shall be given a normal service life of 100 years.

(*c*) Cast-iron culvert pipe shall be given a normal service life of 80 years, and other iron or steel pipe a normal service life of 30 years.

(*d*) Vitrified and concrete culvert pipe shall be given a normal service life of 50 years.

(*e*) Masonry piers and abutments shall be given a normal service life of 100 years.

Account 7. Elevated Structures.

Depreciate on the same basis as Account 6.

Account 8. Ties.

Where the track has reached such a condition that the tie renewals are uniform in quantity and quality from year to year the service condition shall be considered as 50 per cent. The average life of ties shall be determined by a study of the carrier records of tie renewals supplemented by a consideration of field observations.

Account 9. Rails.

Rails shall be considered as having two cycles of life, viz., new to relay and relay to scrap. Each cycle shall be considered separately and have a range of service-condition per cent of 100. The first cycle for a particular carrier shall be determined by a study of its rail renewals and the rail renewals of other carriers in the vicinity having similar traffic conditions. This cycle may vary upon different divisions of the same carrier where traffic conditions are different. A net salvage value shall be allowed for rails at the end of the first cycle equal to the price of relay rail at carriers nearest material yard, less cost of bringing same from point where renewed.

The second cycle shall be considered as having a normal life of 50 years.

When in depreciating relay rail the date relaid can not be ascertained from records the same shall be estimated from the best available data. Where rail was laid new in sidetracks and will be used in this service until it becomes scrap it shall be given a normal life of 75 years. Where the annual rail renewals in yards have become uniform in quantity and quality a service condition of 50 per cent may be used.

A net price shall be assigned to scrap rail based upon the price of scrap at the carrier's nearest material yard, less cost of bringing same from point where renewed. The weight of relay and scrap rail shall be assumed to be the same as that of new rail.

339 Account 10. Other Track Material.

(*a*) Splice bars shall be depreciated in cycles on the same basis as the rail with which they are used.

(*b*) Bolts shall be depreciated from new to scrap during each cycle of the rail with which they are used.

(*c*) Spikes shall be depreciated on the same basis as the ties with which they are used.

(*d*) Where average annual renewals of frogs and switches are uniform and conditions warrant, they may be depreciated on a 50 per cent basis.

(*e*) All other track material for this account shall be depreciated from new to scrap during each cycle of the rail.

Account 11. Ballast.

Ballast shall be depreciated according to the general rules.

Account 12. Track Laying and Surfacing.

Track laying and surfacing shall be depreciated with the materials composing the track included under Accounts 8, 9, 10, and 11. The depreciation shall be determined on the basis of the depreciation weighted according to the labor costs assignable to the materials of the several accounts.

Account 13. Right-of-Way Fences.

Right-of-way fences shall be depreciated under the general rules.

Account 14. Snow and Sand Fences and Snowsheds.

Property under this account shall be depreciated according to the general rules.

Account 15. Crossings and Signs.

Property under this account shall be depreciated according to the general rules. The normal life of materials stated under Account 6 shall be applied to culverts and bridges.

Account 16. Station and Office Buildings.

Timber structures shall be given a normal service life of 50 years and masonry structures 100 years, suitably modified where observation shows principal parts are new or in need of renewal.

Account 17. Roadway Buildings.

Roadway buildings shall be depreciated as in Account 16.

Account 18. Water Stations.
Account 19. Fuel Stations.
Account 20. Shops and Enginehouses.
Account 21. Grain Elevators.
Account 22. Storage Warehouses.
Account 23. Wharves and Docks.
Account 24. Coal and Ore Wharves.
Account 25. Gas Producing Plants.

Property under these accounts shall be depreciated in accordance with the general rules.

Account 26. Telegraph and Telephone Lines.

Iron wire shall be given a normal service life of 50 years and copper a normal service life of 100 years. Other property shall be depreciated according to the general rules.

340 Account 27. Signals and Interlockers.
Account 28. Power Dams, Canals, and Pipe Lines.
Account 29. Power-Plant Buildings.
Account 30. Power Substation Buildings.

Account 31. Power-Transmission Systems.
Account 32. Power-Distribution Systems.
Account 33. Power Line Poles and Fixtures.
Account 34. Underground Conduits.
Account 35. Miscellaneous Structures.
Account 36. Paving.
Account 37. Roadway Machines.
Account 38. Roadway Small Tools.
Account 44. Shop Machinery.
Account 45. Power-Plant Machinery.
Account 46. Power Substation Apparatus.

Property coming under these accounts shall be depreciated under the general rules.

Account 51. Steam Locomotives.

Steam locomotives shall be depreciated according to the general rules.

The percentage finally established as representing the present service condition of each locomotive shall be the weighted average of the assigned condition per cent of the following principal parts:

Engine: (*a*) Boiler; (*b*) underframe; (*c*) running gear.
Tender: (*a*) Trucks; (*b*) underframe; (*c*) tank.

Account 52. Other Locomotives.

Use the same rules as set forth under Account 51.

Account 53. Freight-Train Cars.

Freight-train cars shall be depreciated according to the general rules.

A service condition shall be established for each series of cars, which shall be the weighted average of those cars of the series actually inspected. Not less than 10 per cent of the cars of each series shall be inspected for condition, and a larger percentage where a series contains a small number of cars, or if the cars in a series vary greatly in condition.

The service-condition per cent established for each car inspected shall be the weighted average of the service-condition per cent assigned to the following principal parts of the car:

(*a*) Body, (*b*) underframe, and (*c*) trucks.

Account 54. Passenger-Train Cars.

Passenger-train cars shall be depreciated according to the general rules.

Each passenger-train car shall be separately inspected to determine service condition, following the same general rules as set forth under Account 53.

Account 55. Motor Equipment of Cars.
Account 56. Floating Equipment.

Account 57. Work Equipment.
Account 58. Miscellaneous Equipment.

Property coming under these accounts shall be depreciated in accordance with the general rules.

341 EXHIBIT 3 TO PETITION.

Filed October 25, 1922.

APPENDIX A.

Kansas City Southern Railway Company, Valuation Docket No. 4.

Statement of Methods Pursued in Developing Excess Cost of Lands.

In meeting the requirement of paragraph entitled Second of Section 19 (*a*) of the Interstate Commerce Act to report the present cost of condemnation and damages or of purchase in excess of present value we attempt to show what the expense to a carrier would be of acquiring its common-carrier lands upon the date of valuation, on the assumption that it did not possess those lands, but was obliged to obtain them through purchase or condemnation at the value of similar lands in the vicinity, on that date.

It is evident that the figure reported can be only an estimate since the amount which wouldd actually be paid would depend to a considerable extent upon circumstances and conditions which can not be definitely described. If a community is eager for the construction of a railroad the right of way can be obtained at a much lower figure than as though the building of the road is opposed by that community. So too the attitude of the carrier might exercise a considerable influence upon the amount of money expended in the acquisition of its lands. It is also apparent that if the railroad did not exist the present value of lands adjoin
342 ing and adjacent to the railroad would not exist. The management of one railroad might deem it for its advantage to pay liberally, thus cultivating the good graces of the community, while another might deem it better business to force many cases into court thereby obtaining a better price where purchases were made. In our estimate no allowance whatever is made for anything of this character. We necessarily assume average conditions of all kinds, and we further assume that all lands are paid for.

One method by which this excess cost of acquisition might be shown would be to take each individual parcel and attempt to estimate how much the carrier would be compelled to pay the land owner by way of severance damages or in addition to the acreage value of the land. This would involve an examination of each parcel and a consideration of the various elements affecting these damages. In many cases testimony would be introduced. It would in effect be a proceeding in condemnation to determine what the carrier should pay. Manifestly this method can not as a practical

matter be resorted to. It would require years of time and millions of dollars in expenditure to bring the work to a completion in that way.

So far as possible our prices have been determined with reference to actual transactions. The unit prices which we apply to our inventory in showing cost of reproduction are developed from a great number of actual prices paid by the carriers for the same class of work and material. In fixing the present value of lands more attention is paid to actual sales than to any other one factor. So it was felt here that if possible some method should be developed which would be based upon actual transactions.

The severance damages paid by a carrier to the land owner
343 in one individual case would not be a reliable guide as to what would be paid or should be paid in all other cases of a similar character; but the thing aimed at is the same, in every similar case the rules of law applicable are identical and while human inclination or human judgment may go astray in individual instances still taken as a whole what has actually happened in the payment of these damages is the best guide we can obtain. While a single instance is not reliable if it is possible to find a great many instances and put those instances together in the form of an average that average will express the fact more accurately than any sort of an estimate. This is the general theory upon which this work has been developed.

First the lands of the carrier are divided into classes known as types. There is one type for city property of a certain kind, a second for city property of another kind, a third for farming land, a fourth type for wood land, etc., etc. The type may depend upon the shape of the parcel and the manner in which it is crossed by the road of the carrier.

Having determined these types we proceed to find actual cases corresponding to each type. These instances are obtained for the most part from carriers other than the one under consideration. We know with respect to each one of these actual transactions what amount paid by the carrier to the land owner was. We ordinarily know the present value which is the value which we ourselves determine and report. In some instances where the transaction is somewhat remote and where there is reason to suppose that the present value may have varied betwen the date of the trans-
344 action and the determination of our present value a present value as of the date of the transaction is ascertained by the same methods as in our ordinary land work. This, however, is very unusual since our instances are taken from transactions occurring not to exceed ten years from the date of valuation.

Having selected these transactions which fit a particular type we carefully examine each one of them for the purpose of determining whether it is apparently in all respects normal. If it appears to be abnormal it is rejected.

It will be noted that in case of each transaction we know the present value and also the amount actually paid by the carrier to the land owner. By subtracting the present value from the total

amount paid the land owner we find the excess cost in each case and proceed to determine the ratio betwen such excess cost and present value. The result is known as the mutiple of that individual case. All the multiples of a given kind are now combined into a weighted average and this average is treated as the multiple of that type. The multiple so determined is compared with multiples in other parts of the country.

When multiples have been determined for all the types into which the land of a given carrier falls the process of determining the excess cost consists of combining all parcels of a certain type, determining present value of those parcels in the aggregate and applying to that present value the multiple determined. When this has been done as to all the types it affords the basis for the estimate now made of the total amount of excess cost.

It frequently happens that a carrier is credited in our land report with the amount actually paid by it in securing the right
345 to use a public street or some portion of the public domain. No multiple would be applied to the sum so stated since the carrier is allowed only the amount actually expended and we assume that the price charged by the municipality if this right to be re-acquired would be the same that it originally was.

It is also evident that there would be certain expenses connected with the acquisition of these lands aside from the amount of money paid to the land owner and these are designated in our report as incidental expenses. They are made up of the fees and expenses of attorneys, right of way agents, etc., etc., together with cost of recording deeds, making maps and such like. The amount is small in comparison with the total cost. In determining the incidental expenses upon a particular carrier the expenses of a similar character upon that same carrier actually incurred when the road was constructed are examined if known. Similar expenses upon other roads are also examined and from all this an estimate is made of what the expenses would be upon the road under consideration. So far it has not been deemed proper to compile a percentage for the purpose of determining those expenses since they would vary upon different carriers according to the character of the right of way, the number of parcels and many other incidents.

If now we combine the excess cost paid to the land owner as hereinbefore stated and the incidental expenses incurred by the carrier in the acquiring of its lands we shall have the total excess cost. This figure is shown in our report as the excess cost of acquisition. In the column immediately following this is shown the percent which the excess cost of acquisition bears to present value.

It is evident that this would show the excess cost to the
346 carrier of acquiring its lands but the carrier insists that the figure shown by us should contain something beyond this. It is well known that one of the first expenses in the actual construction of a railroad is for its right of way lands and these lands develop no earning power and therefore yield no return on the investment until the road is finished and finally opened for operation. The carriers therefore insist that they should be allowed interest on their expenditure for lands from the time it is made until the

money begins to earn from operation. However, this has been compensated for by basing the estimate on present value of land, rather than the value as of the time the lands would be acquired under the hypothetical reproduction theory. Further, while many of these lands would be purchased before construction actually begins others would not be, and many parcels would not be paid for until construction had ended.

The carrier would also pay certain taxes which would vary from nothing at all in some states where lines under construction are specifically exempted from taxation or where the gross receipts from operation are taxed, to other states where quite a substantial sum might be exacted if the period of construction were considerable. The taxes assessed, in practice, are levied upon lands, and for the same reasons that interest on the cost of acquisition of lands during the construction period is not consonant with the estimate here made, none is made for taxes during the construction period in this connection.

EXHIBIT 4 TO PETITION.

347 Filed October 25, 1922.

Before the Interstate Commerce Commission.

Valuation Docket No. 121.

67096.

Pine Bluff Arkansas River Railway.

Valuation Docket No. 129.

Shreveport Bridge & Terminal Company.

Valuation Docket No. 132.

St. Louis Southwestern Railway Company of Texas; Stephenville North & South Railway Company.

Valuation Docket No. 136.

Dallas Terminal Railway & Union Depot Company.

Valuation Docket No. 142.

St. Louis Southwestern Railway Company; Gray's Point Terminal Railway Company; Paragould Southeastern Railway Company; Central Arkansas & Southern Railway Company.

348 EXHIBIT 4 TO PETITION.

Filed October 25, 1922.

* * * * * * *

Motion for Inspection of Records, Subpœna Duces Tecum, and for Additional Hearings at St. Louis, Missouri, and Dallas, Texas.

In the above-entitled cause come the Pine Bluff Arkansas River Railway, the Shreveport Bridge and Terminal Company, the St.

Louis Southwestern Railway Company of Texas, the Stephenville North and South Railway Company, the Dallas Terminal Railway and Union Depot Company, the St. Louis Southwestern Railway Company, the Gray's Point Terminal Railway Company, the Paragould Southeastern Railway Company, and the Central Arkansas and Southern Railway Company, who are hereinafter jointly designated the petitioners, and respectfully show unto the Commission as follows:

(1) The tentative valuations served herein are based upon certain underlying data now in the possession of the Bureau of Valuation, to wit, the original field notes, cost data, copies of contracts, records of construction costs, opinions, sales, assessments and other data, reports, records and compilations of the land, accounting and engineering sections, which data petitioners have been denied the right to examine.

Petitioners are informed, verily believe and charge that said data is material to the issues herein and constitutes evidence in support of their protests filed herein, and that an inspection and ex-
349 amination of the same will enable them to show at the trial that the aforesaid tentative valuations are wholly erroneous and without basis in law or in fact, and that the said tentative valuations should be set aside and held for naught.

The Act to Regulate Commerce expressly provides that "unless otherwise ordered by the Commission with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public." No such order has been entered with respect to the foregoing data, nor can the Commission lawfully make an order withholding from the petitioners the facts and data upon which the tentative valuation of their property has been made, whatever order may be made as to the public.

The denial of petitioners' right to such examination and inspection is an unlawful usurpation and abuse of authority, constituting an infringement of their property rights.

(2) Petitioners further show that the above-entitled proceedings have been set down for hearing at Washington, D. C., September 26, 1922, and petitioners have been officially informed that no hearing in said proceedings will be held at any place except Washington, D. C. In order to correct the crude, biased and erroneous land appraisal of the Bureau of Valuation, and to show the true value of such lands, it will be necessary to produce nearly 200 witnesses residing in the respective communities along the lines of their railroads. These witnesses have varied and important business interests and it would impose a severe hardship upon them to compel them to leave
350 their businesses and homes to attend a hearing at Washington. Petitioners would also be put to a large and unnecessary expense in bringing such a number of witnesses for such a distance.

To refuse to set these proceedings down for hearing at a point convenient for the attendance of these witnesses is in effect a deprivation of petitioners' right to that hearing which the Com-

mission is required to give them before deciding the issues herein involved.

Wherefore, petitioners jointly and severally pray:

(1) That the Commission make and enter an order permitting the carriers to examine all aforesaid data, reports, compilations and records of the Bureau of Valuation upon which said tentative valuations are based or which in any way relate thereto, and to afford them reasonable opportunity to make copies, written and photographic, of the same;

(2) That the Commission issue a subpoena duces tecum to the following named officers and employes of the Bureau of Valuation, commanding them to appear and give testimony at the hearing to be held at Washington, D. C., on September 26, 1922, as aforesaid, bringing with them all of the above described data, reports, compilations, records and memoranda, and all other data and compilations in any way relating to the matters in issue, to wit:

C. F. Staples, P. J. Farrell, C. W. Needham, F. H. Jones, T. P. Artaud, Andrew Wiley, and such of their subordinates as have personal knowledge of the data above described.

(3) That the Commission enter an order setting down the above proceedings for hearing at St. Louis, Missouri, and Dallas,
351 Texas, at some time subsequent to the hearing on September 26 at Washington, D. C.

Respectfully submitted,

DANIEL UPTHEGROVE,
E. B. PERKINS,
J. R. TURNEY,
Attorneys for the Above-named Petitioners.

352 *Rule to Show Cause.*

Filed October 25, 1922.

* * * * * * *

Upon the annexed petition of the St. Louis Southwestern Railway Company, verified by its General Solicitor, J. R. Turney, on the 25th day of October, 1922,

It is ordered that the above named respondents, Interstate Commerce Commission of the United States, George B. McGinty, Charles F. Staples, Charles W. Needham, Howard M. Jones, Theodore P. Artaud, Andrew Wiley, show cause at a session of this court to be held in the Court House of the Supreme Court of the District of Columbia in the City of Washington, on or before the 25th day of November, 1922, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be entered herein granting a peremptory writ of mandamus requiring the respondents to forthwith permit the relator and its authorized agent to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation upon which said valuations of relator's property are based or which are in any way related

thereto, at all reasonable times and under reasonable restrictions and safeguards, to afford relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same, and to issue a subpœna duces tecum to the following named persons, commanding them to appear and give testimony at the hearings to be had upon relator's protest against the tentative valuation of its properties made by said respondent, Interstate Commerce
353 Commission at Washington, District of Columbia, bringing with them all of the a' ove-described underlying data, reports, compilations, records, and memoranda in any way relating to the matters in issue in said proceeding to determine the value of relator's property, to-wit: Howard M. Jones, Theodore P. Artaud, Andrew Wiley, Charles F. Staples, and Charles W. Needham.

And respondent is further required to show cause at said time and place why in case this court shall refuse such peremptory writ an order should not be granted directing that an alternative writ issue requiring and directing the said respondent to perform the aforesaid act or to show cause before this court at such time as may be fixed by this court why a peremptory writ of mandamus should not issue to that effect.

Sufficient reason appearing therefor, let service of this order be had on the respondent on or before the 26th day of October, 1922.

WILLIAM HITZ,
Justice of the Supreme Court of the District of Columbia.

Marshal's Return.

Served a copy of the within rule on Interstate Commerce Com. of U. S. by Chas. F. Staples, Asst. Director, personally, 10-31-22.

E. C. SNYDER,
U. S. Marshal.

K.

354 *Motion to Dismiss.*

Filed November 16, 1922.

* * * * * * *

Now comes the Interstate Commerce Commission, George B. McGinty, Charles F. Staples, Charles W. Needham, Howard M. Jones, Theodore P. Artaud and James M. Willey, Jr., erroneously named "Andrew Wiley" in the petition, respondents in the above entitled case, and move the court to dismiss the petition in said case upon the grounds that—

1. The petition does not contain statements or allegations of fact which entitle the relator to the relief or any of the relief prayed for by it in and by said petition.

2. The petition does not contain statements or allegations of fact which show or tend to show either that the respondents have or that any of them has done any act in conflict with or in violation of any legal right or any other right of the relator, or that respondents have or that any of them has failed or refused to perform any duty imposed by law.

3. The petition does not contain statements or allegations of fact which show or tend to show that the respondent Interstate Commerce Commission has refused to issue subpœnas requiring said other respondents to appear at a hearing before said Commission and testify concerning the valuation of the property of relator referred to in said petition.

355 4. The statements and allegations of fact contained in the petition show conclusively that the sole purpose of the petition is to obtain from this court an order suspending and setting aside an order made by said Commission under the authority conferred upon it by the interstate commerce act, particularly section 19*a* thereof, over which this court has no jurisdiction and over which the District Courts of the United States have exclusive original jurisdiction, under the Urgent Deficiency Appropriations Act of October 22, 1913, 38 Stat. L., 219-220.

5. The motion referred to as Exhibit 4 in the petition is entirely general in character, and in said motion no particular record or particular datum is mentioned, specified, or designated.

P. J. FARRELL,
For Each of and All the Respondents.

Opinion of Court.

Filed January 3, 1923.

* * * * * * *

This case arises out of the act of Congress, of March 1, 1913, commonly known as the Valuation Act, under the terms and provisions whereof the Interstate Commerce Commission, as alleged in the petition filed herein, has made and filed its tentative valuation and report of the value of all property owned or used by relator.

The petition also alleges that the Interstate Commerce Commission has also filed its tentative valuations and reports in respect of
356 the Texas Midland Railroad and the Kansas City Southern Railway Company, (each and all of said valuations and reports being made exhibits to the petition.)

The petition further alleges that, within the time, and in the manner and form required by law, the relator filed its protest against said tentative valuation, in which it excepted and protested against certain findings therein contained. It is further alleged that the findings contained in said tentative valuation are based upon certain underlying data, gathered and compiled by the officers and employees of the Bureau of Valuation; that the relator can only test the soundness or correctness of said tentative findings upon the afore-

said underlying data, and which underlying data is voluminous and comprises several thousand pages of records, papers, etc.; that the relator has demanded access to the aforesaid underlying data for the purpose of testing and verifying the same, which demand the Interstate Commerce Commission has denied. It is further alleged that the underlying data aforesaid are public records and material to the issues contained in said valuation proceeding.

The petition prays for the issuance of a peremptory writ of mandamus, commanding the respondents to permit relator to examine the aforesaid underlying data, contracts, reports, compilations and records of the Bureau of Valuation, upon which said valuations of relator's property are based, or which are in any way related
357 thereto, with reasonable opportunity to be afforded to make copies thereof, written and photographic; as well, also, to direct the Interstate Commerce Commission to issue a subpœna *duces tecum* to divers named officers and employees of the Bureau of Valuation, of the Interstate Commerce Commission, commanding them to appear and testify at hearing to be had upon relator's protest against the tentative valuation of its property, aforesaid, and to bring with them all of the above described underlying data, reports, records and memoranda and all other data and compilations in any way relating to the matters in issue in said proceeding, etc.

Motion has been interposed by respondents to dismiss the petition, the several grounds of which need not here be separately stated, but the general allegation therein is that the petition does not contain statements or allegations of fact which entitle the relator to the relief therein prayed, or to any relief in the premises.

The case has been ably presented by counsel representing the respective parties to the cause, both orally and in printed briefs; all of which arguments have been carefully considered by the court.

For present purposes, it will probably suffice to say that the question involved is a most important one, the determination thereof reaching, in necessary effect, not only to the relator in the instant case, but to a vast number of other railroads similarly situated, either now or hereafter as tentative valuations may be made, and it may be supposed that the parties here in interest will desire
358 the decision of the court of last resort to which the question may be taken, and that the present application to this court is but a necessary preliminary step in the procedure.

For the reasons stated, this court does not deem it necessary to do more than announce its conclusion, which is, that it is the judgment of the court that the motion to dismiss should be granted.

If the relator should conclude to stand upon its petition, in order to speed the cause, judgment may be entered herein for the defendant, and dismissing the petition at the cost of the petitioner.

Let appropriate order be entered herein sustaining the motion of respondents to dismiss the petition, and such further order thereafter as may be or become appropriate, as hereinabove stated.

A. A. HOEHLING,
Justice.

January 3, 1923.

Supreme Court of the District of Columbia.

Thursday, January 4th, 1923.

Session resumed pursuant to adjournment, Hon. A. A. Hoehling, Justice, presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record, and thereupon this cause heretofore submitted to the Court upon the petition and exhibits and the motion filed to dismiss said
359 petition having been considered, it is ordered that said motion be, and is hereby granted.

Thereupon, the petitioner by its attorney elects to stand upon its petition. Wherefore, it is considered that the petition herein be, and the same is hereby dismissed, that petitioner take nothing by this suit, that respondents go hence without day and recover of petitioner their costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the petitioner by its said attorney, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars.

Memorandum.

January 15, 1923. Undertaking on Appeal to Court of Appeals approved and filed.

Assignments of Error.

Filed January 15, 1923.

* * * * * * *

The St. Louis Southwestern Railway Company, Petitioner and Relator herein, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers oc-
360 curred upon the trial of this cause, to-wit:

(1) The Court erred in holding and deciding that the petition did not contain statements or allegations of fact sufficient to constitute a cause of action against Respondents or to entitle Relator to the relief prayed in its petition or to any relief in the premises.

(2) That the Court erred in granting and sustaining the motion made by counsel for Defendants in Error that the Court dismiss Relator's petition for a writ of mandamus herein.

(3) That the Court erred in entering an order dismissing Relator's petition for a writ of mandamus.

(4) That the Court erred in rendering judgment against the relator upon the sustaining of the Motion to Dismiss of Respondents.

(5) That the Court rendered judgment against Relator, whereas the judgment ought to have been rendered in favor of Relator and against the Respondents.

(6) That the Court erred in overruling and denying Relator's petition for the issuance of a peremptory writ of mandamus commanding and directing the Respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation as described in Relator's petition, and upon which the tentative valuation of Relator's property are based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same.

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(7) That the Court erred in denying Relator's petition and in refusing to grant an order for the issuance of an alternative writ of mandamus commanding Respondents to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the Respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation as described in Relator's petition, and upon which the tentative valuation of Relator's property are based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same.

(8) That the Court erred in denying Relator's petition, and in declining to issue an order for the issuance of a peremptory writ of mandamus, commanding and directing the Respondents, Interstate Commerce Commission, to issue a *subpœna duces tecum* to the following named officers, employees of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the Tentative Valuation of its property, at Washington, D. C., all as described in the petition, to-wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

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(9) That the Court erred in denying Relator's petition and in declining to make and enter an order for the issuance of an alternative writ of mandamus commanding and directing the Respondent, Interstate Commerce Commission to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the said respondent to issue a *subpœna duces tecum* to the following officers, employees of the Bureau of Valuation of the Interstate Com-

merce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the Tentative Valuation of its property, at Washington, D. C., all as described in the petition, to-wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

Wherefore, the Relator, St. Louis Southwestern Railway Company, prays that the judgment of the Supreme Court of the District of Columbia may be reversed.

J. R. TURNEY,
CHARLES D. DRAYTON,
Attorneys for Relator.

363 *Designation of Record.*

Filed January 15, 1923.

* * * * * * *

The Clerk will please include in the record on appeal the following:

1. Original petition and exhibits 1 to 4, inclusive, thereto attached.
2. Rule to show cause.
3. Motion to dismiss petition.
4. Opinion of Court Filed January 3, 1923.
5. Order sustaining motion to dismiss petition and judgment for respondent.
6. Memorandum as to filing of bond.
7. Assignment of errors.
8. This order.

J. R. TURNEY,
CHARLES D. DRAYTON,
Of Counsel for Relator.

364 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 363, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 67096 at Law, wherein United States of America, at the Relation of the St. Louis Southwestern Railway Company is Relator and Interstate Commerce Commission of the United States, et al. are Respondents, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 16th day of February, 1923.

[Seal of the Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3962. United States of America at the relation of the St. Louis Southwestern Railway Co., appellant, vs. Interstate Commerce Commission et al. Court of Appeals, District of Columbia. Filed Feb. 19, 1923. Henry W. Hodges, Clerk.

Monday, April 30th, A. D. 1923.

* * * * * * *

[Title omitted.]

ARGUMENT OF CAUSE

The argument in the above entitled cause was commenced by Mr. J. R. Turney, attorney for the appellant, and was continued by Mr. P. J. Farrell, attorney for the appellees, and was concluded by Mr. J. R. Turney, attorney for the appellant.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

OPINION

Before Smyth, Chief Justice; Robb, Associate Justice, and Smith, Judge of the United States Court of Customs Appeals

Mr. Chief Justice SMYTH delivered the opinion of the Court:

SMYTH, Chief Justice:

The relator applied to the Supreme Court of the District of Columbia for a mandamus commanding the Interstate Commerce Commission to permit it to examine certain records in the possession of the Commission, and to issue subpœnaes duces tecum for named employes of the Commission to appear and give testimony at a hearing to be had upon relator's protest against a tentative valuation of its property by the Commission, and bring with them all the records in their possession relating to the valuation. A rule to show cause was issued, in response to which the Commission moved to dismiss the petition on several grounds, which were to the effect that it did not state facts sufficient to entitle relator to the relief prayed. The motion was sustained, and, since the relator did not desire to amend, a judgment of dismissal followed.

By section 19a of an act approved March 1, 1913 (37 Stat. 701), it is provided that the Commission shall investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of an act to regulate commerce, approved February 4, 1887. After having reached a tentative valuation, the Commission is required to give notice to the carrier affected, and to other persons, stating the valuation arrived at, and to give thirty days for the filing of a protest by those interested with the Commission. If a protest is filed, a time must be fixed for a hearing, at which the Commission must hear and consider any matter rela-

tive and material which may be presented in support of the protest. If after the hearing the Commission thinks the valuation previously fixed should be changed, it shall make the change and the valuation fixed after the change shall be final except in circumstances just to be mentioned. The final valuation is made prima facie evidence of the value of the property in all judicial proceedings for the enforcement of the act of February 4, 1887, and the acts amendatory thereof, and in any proceeding to enjoin, in whole or in part, any order of the Commission. If upon the trial of any action involving the final value fixed by the Commission evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto, and substantially affecting the value, the court, before proceeding to render judgment, shall transmit a copy of the evidence to the Commission and shall stay further proceedings in said action to such time as the Court shall determine from the date of such transmission. Other provisions follow with respect to the valuation, but they are immaterial here.

The Commission has fixed a tentative value of relator's property, relator has protested the value fixed, and a date has been set for hearing the protest.

By its petition relator sets forth that the Commission has in the course of its investigations gathered a large amount of data upon which its tentative value was fixed; that it has not disclosed to relator the names, addresses, or qualifications of its subordinates who collected the data, nor the names or addresses of the carriers, contractors, dealers, manufacturers, or jobbers from whom certain contracts, invoices, and vouchers were obtained by it, nor the names of the land appraisers who made an inspection of relator's land, etc. It represents that, according to its information, many of those who gave opinions and statements to the Commission's investigators were without experimental qualifications to do so, and that it desires to test the soundness of the tentative value by examining and verifying the opinions, statements, and data upon which it is based, and by cross-examining the witnesses who compiled the data and gave testimony with respect to the matters involved.

Relator also avers that it made demand for access to the underlying data just mentioned, for the purposes indicated, and that its demand was denied. Later it moved the Commission for an order permitting it to examine the data and make photographic copies of the same, and for subpœnaes duces tecum directed to the employes to appear and give testimony, and bring with them the records referred to.

After the application was made the Commission cancelled the date of the hearing on the protest, and later entered an order wherein it stated that the opening of the records mentioned for inspection and examination by other than employes of the Commission would not be permitted except under certain stated conditions.

It is charged by the relator that after the entry of the above order the chief counsel for the Commission declared that at the hearing upon the protest the relator would not be allowed to introduce the

data referred to, or interrogate the employes of the Commission concerning the same, and that the Commission would not introduce any of the underlying data in evidence at the hearing. Therefore, the relator alleges that it will not have an opportunity at the hearing to examine or test the evidence underlying the tentative valuation. In consequence it prays as we indicated at the opening of this statement.

The relator, both in its petition and its brief, makes clear that its purpose is to procure an opportunity to scrutinize and test the data and cross-examine the persons who gave the information on which the tentative valuation is based. The Commission, according to its order just referred to, believed that to allow the carrier this opportunity "would be detrimental to the public interest; would make it impossible for the Commission to secure as reliable and uninfluenced opinions as to land values and price and cost information as it can otherwise secure; would unnecessarily prolong the work and greatly increase the expense thereof; and would seriously interfere with due performance of the regular duties of the Commission's employes."

We think it is true that persons who would be willing to speak freely and truthfully from an abundance of information upon the subject about which they talked, if they were assured their names would not be known to the carriers, might, because of their business or social relations, prove very reluctant witnesses on the stand and might give only such information as was elicited from them by persistent questioning. Congress evidently had this in mind when it enacted section 19a. If it intended that the carrier should have the right to cross-examine the persons who gave the information and scrutinize the documents on which the Commission acted, it would, we think, have provided for a hearing at which the carrier would have the right to be present and take such steps as it might deem necessary to protect its rights. But it did not do so. Instead it provided for a hearing before the Commission at a later stage in the process of valuation at which the carrier is given a full opportunity to establish, if it can, that the valuation fixed is not correct. Presumably, the relator knows the value of its own property. (Chicago, Burlington & Quincy Railroad Co. vs. Shafer, 49 Neb. 25, 31), and can prove it without calling upon the Commission to disclose its confidential information upon the subject.

Up to the time the tentative value is arrived at the Commission acts as appraiser merely. It is free to gather its information from whatever source it pleases, and the carrier has no right to know the source or to question the persons from whom the information has been procured. In the case of Omaha vs. Omaha Water Co., 218 U. S. 180, 197, the court passed upon the right of the city of Omaha, through its counsel, to examine the books submitted by the Water Co. to appraisers named to fix the value of the company's plant. After pointing out the distinction between valuers and arbitrators, it stated that much of the evidence bearing upon the subject was submitted in the presence of counsel representing both sides, and was, of course, subject to the examination and cross-examination of the parties. "This course," said the court, "did not, however, preclude

them (the appraisers) from enlightening their judgment as experts by either personal inspection or by informing themselves in any other way of the value of the plant in question without calling in counsel if they desired further information." Near the close of the taking of testimony the appraisers, according to the court's opinion, called upon the company for its books, and had the books gone over by an auditor of their own selection. Counsel for the city learning of the call asked for an opportunity to be present when the books were submitted. The opportunity was denied and the city assigned this as error. In passing upon the matter the court said: "We have only the lone fact that the appraisers of their own motion asked an opportunity to look over and have audited the company's books and that the company granted the privilege as 'confidential information' for the use of the appraisers only," and held that counsel for the city was not entitled to be present when the books were submitted, and that there was no error in refusing to disclose the confidential information. If in that case the appraisers were entitled to treat the information which they derived from the Water Company, a private enterprise, as confidential and to refuse to reveal it to those representing the city, a fortiori the Interstate Commerce Commission, acting for the public, should have the same right with respect to the information which it has procured and which the relator demands the right to inspect. Counsel have attempted to distinguish this case from the one at bar, but we think they have failed.

While the relator charges that the chief counsel for the Commission stated that the relator would not be allowed to introduce the data referred to or interrogate the employes of the Commission who gathered the data, we think the formal order of the Commission is the best evidence of its attitude touching the matter. The order says that the data would not be open for inspection except to employes of the Commission "unless and until offered in evidence either in a valuation hearing under the provision of section 19a of the Interstate Commerce Act or in a court of competent jurisdiction." This clearly means that the data and other matters covered by the order may be offered in evidence on the hearing before the Commission, and hence that the relator is not denied the right to offer it if it thinks proper to do so. The subpœna duces tecum to require the employes of the Commission to produce the records is entirely unnecessary. Those employes are subject to the direction of the Commission, and in a proper case they will be undoubtedly produced, with records pertinent to the issues to be tried, at the request of anybody entitled to have them testify.

But there is another reason why the writ should not issue. Section 19a says, "Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public." Exercising the authority granted it by this provision the Commission has made the order sealing the data. It is argued that while this provision authorizes the Commission to close the data to the general public, it does not authorize it to prohibit a carrier interested from having access to it. Whether or not this construction, urged by the

relator, is correct is immaterial. The provision is certainly open to the interpretation placed upon it by the Commission. The latter may have erred, but we can not, upon an application for a writ of mandamus, review its action for the purpose of determining whether or not it did err.

In the Waste Merchants case (Interstate Commerce Commission vs. United States of America, ex rel. Members of the Waste Merchants Association of New York, decided by the Supreme Court of the United States October 23, 1922), the Commission refused to allow damages to the relator, on the ground that the statute did not authorize it. We issued a writ of mandamus directing the Commission to grant the relief prayed for. The Supreme Court reversed the case, saying "Mandamus can not be had to compel a particular exercise of judgment or discretion * * * or be issued as a writ of error," and cited its decision in Hall vs. Payne, 254 U. S. 343 and other decisions bearing upon the point. In the Hall case the court said, "It is manifest from this statement that the petition presents a controversy over the true construction of the act of 1894. From the act, and the Secretary's decision, it is apparent that the latter was not arbitrary or capricious, but rested on a possible construction of the act. * * * He (the Secretary) could not administer or apply the act without construing it, and its construction involved the exercise of judgment and discretion. The view for which the relator contends was not so obviously and certainly right as to make it plainly the duty of the Secretary to give effect to it. The relator, therefore, is not entitled to a writ of mandamus." See also Riverside Oil Co. vs. Hitchcock, 190 U. S. 316, and Ness vs. Fisher, 223 U. S. 683.

Applying this language to the case before us we can not say that the construction placed upon the provision by the relator was so obviously and certainly right as to make it plainly the duty of the Commission to give it effect. At least the Commission's action rested "on a possible construction of the act," and, therefore, can not be reviewed or controlled in a proceeding of this character.

This case is not like Ex parte Upperco, 239 U. S. 435, where the court, exercising what it supposed to be its common law power, entered an order forbidding a party access to certain depositions and exhibits which had been filed in the case. There was no statute in that case expressly conferring upon the court the power to make such an order.

The relator in its brief covers a wide field, and invites us to consider many things which we do not think should be given attention, because, as we view it, the decisions of the Supreme Court of the United States referred to, and many others which might be cited, as well as decisions of this court, make it very clear that we cannot control by mandamus the discretion vested in the Commission by Congress.

The judgment of the lower court is affirmed, with costs.

Affirmed.

Constantine J. Smyth, Chief Justice.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

CONCURRING OPINION

SMITH, Judge, specially concurring:

The act of March 1, 1913 (37 Stat. 701) directs the Interstate Commerce Commission to make a tentative valuation of the property of common carriers subject to its jurisdiction and requires that notice of such valuation shall be given to the carrier who is allowed 30 days within which to protest. The act further provides that if a protest be duly filed the Commission must fix a time for a hearing, at which the carrier may present any relative or material matter in support of its protest.

I am of the opinion that in making the tentative valuation the Commission acts as an appraising body, but in hearing the protest and in reaching a conclusion as to whether it will modify the tentative valuation, the Commission is exercising a quasi-judicial function. The Commission sitting as appraisers may determine the tentative valuation on ex parte investigations, but when the Commission reviews that valuation after a hearing granted to the carrier by the statute, it acts in a quasi-judicial capacity and cannot in my judgment deny to the carrier suitable process to secure the attendance of witnesses or refuse to produce specified papers or records in its custody which are material and necessary to establish the claims of the protest. To hold otherwise would as I see it make of the protest a mere empty form and of no avail against the tentative valuation. The carrier on the other hand, is not entitled to make an examination of the records of the Commission for the purpose of determining whether or not it will introduce them in evidence on the hearing of the protest. If there be in the possession of the Commission any record or paper which the carrier desires to offer in evidence on the hearing of the protest it is the duty of the Commission, it seems to me, to produce such record or paper on proper demand therefor in order that mistakes in the tentative valuation, if any there be, may be corrected before it becomes final. The courts have no authority to value the properties of the carrier or to modify or correct the final finding of the Commission—that must be done by the Commission itself. From that it follows that if the carrier is denied process to secure the attendance of witnesses or if the Commission refuses to produce for use as evidence on the hearing specified records and papers in its possession or under its control, the carrier will be deprived of the protection which Congress intended to give by granting the right to protest and a hearing thereof.

Inasmuch as it does not appear however from the record in the case that any demand was made on the Commission to produce at the hearing any specified paper or record, or that the production of any such paper or record at the hearing was refused by the Commission

or that a subpœna duces tecum for the production of specific papers or records was denied, I concur in the conclusion reached by the Chief Justice.

James F. Smith.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DISSENTING OPINION

Mr. Justice ROBB, dissenting from the judgment:

In my view the Commission, in fixing the tentative value of the property owned and used by common carriers, is acting in a quasi-judicial capacity and not as a mere appraiser. Upon the filing of a protest by the carrier, the proceeding becomes adversary in character, and I think it follows that the carrier is entitled to be informed of the basis of the Commission's tentative decision. In my view, there was every reason why the carrier in this instance should have been permitted access to the data and records relating directly to the valuation of its property, and no valid reason why it should not.

The provision of Section 19a, in my opinion, simply vested in the Commission authority to withhold such records from the general public, and did not authorize the Commission to withhold them from the carrier affected thereby. The interpretation of this statute is finally for the court and not the Commission. In Work, Sec. of the Interior vs. Mosier, decided by the Supreme Court of the United States on March 19, 1923, the Court, through the Chief Justice, said: "The question whether bonuses were to be included in royalties is a matter of statutory construction, not finally entrusted to the discretion of the Secretary, but determinable in court at the instance of the beneficiaries as of right." And to the same effect is Work, Sec. of the Interior vs. McAlester-Edwards Coal Co., decided by the Supreme Court of the United States on May 21, 1923.

I therefore dissent from the judgment of the court.

Chas. H. Robb, Associate Justice.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Monday, June 4th, A. D. 1923.

* * * * * * *

[Title omitted]

JUDGMENT

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Chief Justice Smyth, June 4, 1923.

Mr. Justice Robb dissenting from the judgment.

Judge Smith, U. S. Court of Customs Appeals, specially concurring.

Judge James F. Smith of the U. S. Court of Customs Appeals sat in this case in the place of Justice Van Orsdel.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed June 12, 1923

And now comes the St. Louis Southwestern Railway Company, the Petitioner and Relator herein, and says that on or about the fourth day of June, 1923, this Court entered judgment herein in favor of the Defendants and Respondents, affirming the judgment of the Supreme Court of the District of Columbia, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this Petitioner, all of which will more in detail appear from the Assignment of Errors which is filed with this petition.

Wherefore, this Petitioner prays that a writ of error may issue in this behalf out of the Supreme Court of the United States, under the Fourth and Fifth paragraphs of Section 250 of an Act to codify, revise, and amend the laws relating to the judiciary (Public — No. 475), for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court; and it is further prayed that bond be fixed in the nominal sum of $300 to operate

as a supersedeas, no fund being involved requiring the protection of a bond.

Charles D. Drayton, J. R. Turney, Attorneys for the St. Louis Southwestern Railway Company, Petitioner.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 12, 1923

The St. Louis Southwestern Railway Company, Plaintiff in Error herein in connection with its petition for writ of error, makes the following assignment of errors which it avers occurred upon the trial of this cause in the Court of Appeals of the District of Columbia, to-wit:

(1) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia in holding and deciding that the petition did not contain statements or allegations of fact sufficient to constitute a cause of action against the Respondents, or to entitle Petitioner to the relief prayed in its petition, or to any relief in the premises.

(2) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia granting and sustaining motion of Defendants in Error dismissing Relator's petition for writ of mandamus.

(3) The Court erred in affirming the order of the Supreme Court of the District of Columbia dismissing Relator's petition for writ of mandamus.

(4) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia against Petitioner upon sustaining motion to dismiss the petition.

(5) The Court erred in affirming the order of the Supreme Court of the District of Columbia overruling and denying Relator's petition for issuance of peremptory writ of mandamus commanding and directing Respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation as described in Relator's petition, and upon which the tentative valuation of Relator's property *are* based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same.

(6) The Court erred in affirming the order of the Supreme Court of the District of Columbia refusing to grant an order for the issuance of an alternative writ of mandamus commanding Respondents to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the Respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation, as described in Relator's petition, and upon which the tentative valuation of Relator's property is based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same.

(7) The Court erred in affirming the order of the Supreme Court of the District of Columbia denying Relator's petition and declining to issue an order for the issuance of a peremptory writ of mandamus, commanding and directing the Respondent, Interstate Commerce Commission, to issue a subpœna duces tecum to the following named officers, employees of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the Tentative Valuation of its property, at Washington, D. C., all as described in the petition, to-wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

(8) The Court erred in affirming the order of the Supreme Court of the District of Columbia denying Relator's petition and declining to make and enter an order for the issuance of an alternative writ of mandamus commanding and directing the Respondent, Interstate Commerce Commission, to appear before the Court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the said respondent to issue a subpœna duces tecum to the following named officers, employees of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the Tentative Valuation of its property, at Washington, D. C., all as described in the petition, to-wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

(9) The Court erred in holding that in the valuation of carrier property under the Act to Regulate Commerce, the Interstate Commerce Commission acts as appraisers and that such valuation proceeding is not a quasi-judicial one and that the Plaintiff in Error was not entitled to be fully apprised of the evidence considered in making such Tentative Valuation or afforded an opportunity to verify, test or refute it contrary to the decision of the Supreme Court in the case of Interstate Commerce Commission versus Louisville and Nashville Railroad Company, 227 U. S. 88.

(10) The Court erred in holding and deciding that the Interstate Commerce Commission was authorized to withhold from the Petitioner records, data and information containing evidence necessary to enable it to prosecute its protest against the said valuation at the hearing thereon, contrary to the decision of the Supreme Court in the case of Ex Parte Upperen, 239 U. S. 435.

(11) The Court erred in holding and deciding that the record did not show that any demand had been made on the Commission to produce at the hearing data or records described with sufficient precision the particular documents desired.

Wherefore, the Petitioner, St. Louis Southwestern Railway Company, prays that the judgment of the Court of Appeals of the District of Columbia may be reversed.

Charles D. Drayton, J. R. Turney, Attorneys for Petitioner.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Tuesday, June 19th, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER ALLOWING WRIT OF ERROR

On consideration of the petition for the allowance of a writ of error to remove the above entitled cause to the Supreme Court of the United States, It is ordered by the Court that said writ issue as prayed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between United States of America at the relation of the St. Louis Southwestern Railway Company, Appellant, and Interstate Commerce Commission of the United States, George B. McKinty, Charles F. Staples, et al., Appellees, a manifest error hath happened, to the great damage of the said appellant, as by its complaint

appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 26th day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of Court of Appeals, District of Columbia.]

(BOND ON WRIT OF ERROR) [for $300; filed and approved, Robb, J., June 26, 1923; omitted in printing]

[File endorsement omitted.]

CITATION AND SERVICE—Filed June 26, 1923

UNITED STATES OF AMERICA, ss:

To Interstate Commerce Commission of the United States, George B. McGinty, Charles F. Staples, et al., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein United States of America at the relation of the St. Louis Southwestern Railway Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this Twenty-sixth day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged June 26", 1923.
P. J. Farrell, Counsel for Defendants in Error.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD ON APPEAL—Filed June 27, 1923

The Clerk will please include in the record on appeal the following:

1. Transcript of the Record filed in this Court, attached.
2. Memorandum as to argument.
3. The opinions of Justices Smyth, Smith and Robb.
4. Judgment affirming decision of Lower Court.
5. Petition for Writ of Error.
6. Assignment of Errors.
7. Order allowing Writ of Error.
8. Writ of Error.
9. Bond on Writ of Error.
10. Citation.
11. This order.

Charles D. Drayton, of Counsel for Plaintiff in Error.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 374, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of United States of America at the relation of the St. Louis Southwestern Railway Company, Appellant, vs. Interstate Commerce Commission of The United States, George B. McGinty,

Charles F. Staples, et al., No. 3962, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 27th day of June, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,708. District of Columbia Court of Appeals. Term No. 398. The United States of America at the relation of the St. Louis Southwestern Railway Company, plaintiff in error, vs. Interstate Commerce Commission of the United States, George B. McGinty, Charles F. Staples, et al. Filed June 27th, 1923. File No. 29,708.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

UNITED STATES OF AMERICA, on the Relation of the ST. LOUIS SOUTH WESTERN RAILWAY COMPANY,

Plaintiff in Error,

vs.

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES et al.,

Defendants in Error.

No. 298.

In Error to the Court of Appeals of the District of Columbia.

BRIEF FOR PLAINTIFF IN ERROR.

E. D. DRAYTON,
P. H. TORNEY,
Attorneys for Plaintiff in Error.

St. Louis Law Printing Co., 416-18 North 8th St., Main 1418, Central 918.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

UNITED STATES OF AMERICA, at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error, vs. INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES et al., Defendants in Error.	No. 398.

In Error to the Court of Appeals of the District of Columbia.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Nature of Action.

This action was originated in the Supreme Court of the District of Columbia by a petition of the United States upon the relation of the St. Louis

Southwestern Railway Company, hereinafter called "Relator," for a writ of mandamus praying that the Interstate Commerce Commission, hereinafter called the "Commission," be directed: (1) to permit Relator to inspect and examine the record and data evidence used by the Commission in making the tentative valuation of Relator's property under Section 19a of the Act to Regulate Commerce, and (2) to issue a subpoena duces tecum requiring certain named employes of the Commission, who gathered, compiled and analyzed the records and data upon which the said tentative valuation was based, to attend the hearing before the Commission in order that Relator might cross-examine them with respect to such records and data.

Nature of Issues Involved.

While the issues involved are simple and may be stated within reasonable compass, the unusual as well as somewhat technical nature of the proceedings before the Commission, in which the controversy originally arose, require a somewhat elaborate and detailed statement of the nature of the proceedings and of the facts which led to the controversy, as the same appear in the petition and exhibits.

The Valuation Act.

Under the provisions of Section 19a of the Act to Regulate Commerce, the Commission was directed to investigate, ascertain and report with respect to property owned or used by common carriers (1) the value of such property; (2) an inventory thereof; (3) the "original cost" thereof; (4) the "cost of reproduction new"; (5) the "cost of reproduction less depreciation"; (6) an analysis of the methods used by which these costs were obtained; (7) other values and elements of value; (8) the original cost of its lands, etc.; (9) the "present value of its lands" and (10) the original and present cost of condemnation or damage in the purchase of such land in excess of the original cost or value.

Valuation Procedure.

The act provides that the Commission shall first make a tentative valuation and serve the same upon the carrier and interested state and Government officials, and give all interested parties an opportunity to file a protest against such valuation; that if protest is filed a hearing shall be had and as a result of such hearing the Commission shall make a final valuation; that this "final valuation" shall be prima facie evidence of the value of the carrier's property in all proceedings both before the Commission and in the courts involving the Act to Regulate Commerce, and, finally, that if in such a judicial proceeding any

evidence is introduced respecting the value of a carrier's property differing from that which was offered upon the hearing before the Commission, the Court, before rendering judgment, shall certify such evidence to the Commission and obtain from it such additional order as it may see fit to make with respect to the value before proceeding further with the cause.

Tentative Valuation of Relator's Property.

In July, 1921, the Commission served upon Relator a tentative valuation of its property as of June 30, 1915. This tentative valuation was made an exhibit to the petition in this case. It values the entire property of the Relator at a little less than twenty-seven million dollars. It states that this final value is based upon its findings, which are also set out in the tentative valuation, of (a) "cost of reproduction new"; (b) "cost of reproduction less depreciation"; (c) "present value of its lands"; (d) "original cost of the property to date." As a matter of fact, this so-called "final value" just equals the "cost of reproduction less depreciation" plus "present value of lands" plus six per cent, plus the amount allowed for working capital. The book cost of the carrier as of the same date is approximately sixty-seven million dollars.

Protest.

The Relator, having filed its protest against the tentative valuation, as required by law, in which it protested, not only the final value, but each of the other costs and values upon which it was based, the valuation proceeding was set down for hearing in accordance with the act.

Commission's Analysis of Methods.

In compliance with the valuation section of the act, the Commission had attached to the tentative valuation an analysis of the methods by which that valuation was reached, which analysis was set out as an exhibit to the petition. An abstract of this analysis is also set out as an appendix to this brief. The following is a statement of the methods the Commission used:

Cost of Reproduction New.

In the analysis of methods the Commission states that it delegated its duties thereunder to a Bureau, which, in order to ascertain the "cost of reproduction new," found it necessary (1) to make an inventory of the physical units of the property; (2) to ascertain the amount which it would have cost to have purchased material for such units and to have installed such units in place, applying such costs to the units of the inventory; (3) to ascertain the overhead expenses which would be incurred in a reproduction of the property. The first step, that is, the in-

ventory, was a joint one and there is no dispute as to the quantities of the several units of physical property.

Determination of Unit Prices.

With respect to the prices, however, the Bureau was unwilling to fix such prices upon the testimony of experts and in lieu thereof ascertained the prices by taking the average cost of a number of projects which had been completed during the ten years prior to June 30, 1914. To this end, it secured from all of the carriers in the country a statement of the amounts which they had paid as per unit of materials used in the construction of railroads during that ten-year period. It also secured by letter, and by personal interview, from manufacturers and other third persons dealing in or with materials used for such purposes average prices of the same materials during the same period. This data the Bureau selected, compiled and analyzed, producing an "average cost" of the material of the several units of physical property f. o. b. point of origin. Having determined this unit cost of the material, the Bureau added the amount which it would cost at the current freight rates to transport the material from the nearest point of origin to the place of installation. To ascertain the cost of installing the material the Bureau caused the carriers to send in a list of all projects involving construction

work during the ten-year period. From this list the Commission's officers selected a number of projects, and compiled, analyzed and produced an "average labor cost of installation" per unit of material, which was added to the material and transportation cost to get the final "unit price." This final unit price was then applied to the quantities of units shown in the inventory to obtain the cost of the work of reproducing the particular unit in place.

Determination of Cost of Reproduction New.

The summation of these costs for all units was used as the cost of reproducing the property in place. To this latter cost, however, the Bureau found it was necessary to add the overhead costs—that is, engineering, general or administrative expense, and interest and taxes upon the investment while the property was being constructed. The Commission decided that this should be done by means of uniform percentages to be applied to the summation of the physical unit costs as above stated. These percentages were obtained by analyzing and averaging the results of certain projects selected by the Bureau which had involved one or more of these overhead expenses. These overhead percentages were applied to the summation of the cost of physical units in place and the total used as the "cost of reproduction new."

Determination of Depreciation.

To ascertain and report the cost of reproduction less depreciation the Commission decided that it should deduct the amount of depreciation from the cost of reproduction new. First defining depreciation as the expiration of service life, it decided that the amount of depreciation in railroad property was the sum of the values of the expired service life of each physical unit. Thus, if there were a hundred thousand ties in a given railroad and the "average life" of each tie were ten years and the ties had been in the railroad for five years, the Commission fixed the amount of depreciation at 50 per cent of the unit cost new (material, transportation and installation) of the ties. The age of each particular unit of physical property was determined with more or less certainty by inspection and by records of the carrier. The only unknown factor, therefore, was the "average life" of each particular unit. The Commission determined this average life of the various units of physical property by gathering data from unnamed sources and using the average of this experience as the "average life" of such units. The summation of the depreciation upon each individual physical unit was determined by applying to such units the per cent of its expired service life, which was thereupon deducted from the "cost of reproduction new" to give the "cost of reproduction less depreciation."

Value of Lands.

The Commission determined the amount of the present value of Relator's lands in the following manner: The Bureau sent out certain men called land appraisers, who ordinarily were strangers to the communities through which the railroad ran. These appraisers divided the railroad's rights of way and terminals up into parcels of land which they called zones. They then procured and recorded in appraisers' reports to the Bureau, called "Field Notes," the amount per acre or other unit of area at which lands adjoining these zones were assessed for taxes, the amount at which such lands had been sold, according to recorded sales, and also the opinion of residents of the community with respect to the value of such adjoining lands, from which information they fixed the average as the value per acre of the contiguous railway zone. The area of each zone multiplied by this unit value gave the value of that particular zone, and the summation of these values, the "present value of Relator's lands."

The Controversy Before the Commission.

Evidence Withheld.

The Commission did not disclose to the carrier any information upon which the unit prices, either for material, transportation or installation, were based, the full extent of the information disclosed being the unit price as a whole. Nor was the carrier advised of the "average life" of the several units of physical property used in determining the amount of depreciation deducted or the data or information upon which such "average life" was founded. With respect to the "present values of land," the carrier was not advised of anything further than the limits and area of the zone and the unit price at which the Commission's appraiser valued that zone.

Motion for Leave to Inspect, etc.

After the hearing before the Commission had been set, Relator filed with the Commission a petition in which it set up the fact that the tentative valuation was based upon the foregoing underlying data and that it had applied to and been denied by the Bureau the right to examine the same, and asked the Commission to permit it to examine such field notes, the cost data, the copies of contracts, the records of construction costs, the opinions, sales, assessments and other data, reports and records and compilations

of the land and engineering sections of the Bureau constituting the basis of the tentative valuation alleging that the same constituted the evidence in support of their protest and that inspection and examination of the same would enable them to show at the hearing upon the protest that the said tentative valuations were wholly erroneous and without basis in law or in fact.

Motion for Subpoena Duces Tecum.

In the same motion the Relator prayed the Commission to issue a subpoena duces tecum commanding certain named officers of the Bureau of Valuation having charge of the date described to attend the hearing upon its protest, and bring with them the above described data.

Order Denying Motion.

Thereafter the Commission entered a general order, which, after reciting the filing of such a motion held that the opening of the records and data named "to the inspection and examination by other than employes of the Commission would be detrimental to the public interests, would make it impossible for the Commission to secure as reliable and uninfluenced opinions as to land values and price and cost information as it could otherwise secure, and would unnecessarily prolong the work and greatly increase the expense thereof, and would seriously interfere with the

due performance of the regular duties of the Commission employes," and which ordered that the data described should not be open for inspection by other than employes of the Commission "unless and until offered in evidence either in a valuation hearing before the Commission under the provisions of Section 19a, or in a court of competent jurisdiction." No mention was made of the motion for the issuance of the subpoena duces tecum, but the subpoena was not issued.

History of This Proceeding.

Petition for Writ of Mandamus.

Thereupon Relator filed a petition for an alternative writ of mandamus, praying the relief hereinbefore described, which, after setting forth the foregoing facts, alleged that the data described had been reduced to writing by the employes of the Commission and filed in its records; that the data contained evidence which would enable the Relator to show to the Commission that the tentative valuation was without basis in law or in fact, and that in order to sustain its protest it was necessary to show that fact; that the data described was voluminous, comprising several thousand sheets of records and papers, and in order to analyze the same, as well as to investigate the accuracy and veracity thereof by examination of the men whose opinions and statements

of fact were thereon recorded, and who were scattered all over the country, much time would be required, and hence, that the data could not be tested after the valuation hearing began; and, further, that the data had been collected a number of years before and related to costs and values of several years previous, and that if the examination was delayed its purpose would be defeated by removal and death of the persons whom it was necessary to interview.

Dismissal of Petition.

The Commission moved to dismiss this petition, which motion was sustained by the Supreme Court of the District upon the ground, among others, that it did not state facts entitling Relator to the relief sought, and this action was affirmed by a majority of the Court of Appeals. The cause is here both by writ of error and writ of certiorari.

DEFINITION OF ISSUES.

Relief Sought.

Relator's petition seeks two measures of relief: First, it asks that the Commission be compelled to permit it to examine the data prior to the hearing, and, secondly, it asks that the Commission be compelled to issue a subpoena duces tecum compelling the production of the data at the hearing.

With respect to the merits, the position of the Commission is that its order denying the petitioner access to the records was authorized by paragraph (e) of the valuation section, and that, therefore, conceding (which it does not) that the petitioner had the right to inspect, that right was cut off by the order, and, furthermore, that the question whether or not the Commission will permit the inspection or introduction of these data in evidence at the hearing is a matter lying entirely within its own discretion.

Opinions of Court of Appeals.

The majority of the Court of Appeals were of the opinion that the construction placed upon paragraph (e) by the Commission was a possible one, and that the courts were not at liberty to inquire into the question whether or not the Commission had exceeded its authority in denying Relator access to the records prior to the hearing.

With respect to the introduction of the data in evidence at the hearing, the Court was unanimously of the opinion that after the filing of the protest the valuation proceeding became a quasi-judicial one, and that, therefore, the Relator had the right to introduce this data in evidence at the hearing.

At this point, however, the opinion of the Justices constituting the Court of Appeals diverged. The Chief Justice was of the opinion that the order of the Commission did not cut off Relator's right to introduce this data in evidence; that a subpoena duces tecum was unnecessary because the Court would presume that the Commission would obey the law and produce the data and permit it to be introduced in evidence when the hearing was had. Mr. Justice Smith, who concurred in the judgment denying the petition, was of the opinion that the subpoena duces tecum was process to which Relator was entitled, but that it had failed to describe the data sought with sufficient particularity, and that, therefore, the petition should be denied. Mr. Justice Robb, who dissented from the judgment of the Court of Appeals, was of the opinion that Relator should be granted both measures of relief sought.

In addition to the issues which were thus disposed of by the Court of Appeals, the Commission urges the further ground, which was not passed upon by either of the lower courts, and that is that this proceeding is in its nature one to set aside an order of the Com-

mission, and it is said that the courts of the district have no jurisdiction of such an action.

Issues.

The issues to be decided by the Court in this case, therefore, may be briefly stated as follows:

(1) Does paragraph (e) of the valuation section authorize the Commission to abrogate the right of a party to a valuation proceeding to inspect and examine public records containing evidence material to the prosecution of its protest against the tentative valuation?

(2) Is a litigant in the hearing upon its protest against a tentative valuation of the Commission entitled to have produced and introduced in evidence records and data constituting the sole basis of the tentative valuation, and, if so, is it entitled to a writ of mandamus compelling the issuance of necessary process to secure the production of these records and data?

(3) Is a petition for a writ of mandamus, which seeks to compel the Interstate Commerce Commission to permit a litigant access to certain records containing evidence material to its case and to compel it to issue process necessary to secure possession of that data and its introduction in evidence at the hearing, an action to annul a general order of the Commission sealing the records, and, if so, have the courts of the District of Columbia jurisdiction of such an action?

ASSIGNMENT OF ERRORS.

The St. Louis Southwestern Railway Company, plaintiff in error herein, in connection with its petition for writ of error, makes the following assignment of errors which it avers occurred upon the trial of this cause in the Court of Appeals of the District of Columbia, to wit:

(1) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia in holding and deciding that the petition did not contain statements or allegations of fact sufficient to constitute a cause of action against the respondents, or to entitle petitioner to the relief prayed in its petition, or to any relief in the premises.

(2) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia granting and sustaining motion of defendants in error dismissing Relator's petition for writ of mandamus.

(3) The Court erred in affirming the order of the Supreme Court of the District of Columbia dismissing Relator's petition for writ of mandamus.

(4) The Court erred in affirming the judgment of the Supreme Court of the District of Columbia against petitioner upon sustaining motion to dismiss the petition.

(5) The Court erred in affirming the order of the Supreme Court of the District of Columbia overruling and denying Relator's petition for issuance of peremptory writ of mandamus commanding and directing respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation as described in Relator's petition, and upon which the tentative valuation of Relator's property is based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employes reasonable opportunity to make copies, written and photographic, of the same.

(6) The Court erred in affirming the order of the Supreme Court of the District of Columbia refusing to grant an order for the issuance of an alternative writ of mandamus commanding respondents to appear before the Court on some day to be named in said write and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the respondents to forthwith permit Relator and its lawfully authorized agents to examine the underlying data, contracts, reports, compilations and records of the Bureau of Valuation, as described in

Relator's petition, and upon which the tentative valuation of Relator's property is based, or which are in any way related thereto, all as set out in Relator's petition, and at all reasonable times and under reasonable restrictions and safeguards to afford Relator and its authorized agents and employes reasonable opportunity to make copies, written and photographic, of the same.

(7) The Court erred in affirming the order of the Supreme Court of the District of Columbia denying Relator's petition and declining to issue an order for the issuance of a peremptory write of mandamus, commanding and directing the respondent, Interstate Commerce Commission, to issue a subpoena duces tecum to the following named officers, employes of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the tentative valuation of its property, at Washington, D. C., all as described in the petition, to wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

(8) The Court erred in affirming the order of the Supreme Court of the District of Columbia denying Relator's petition and declining to make and enter an order for the issuance of an alternative writ

of mandamus demanding and directing the respondent, Interstate Commerce Commission, to appear before the Court on some day to be named in said writ, and to show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the said respondent to issue a subpoena duces tecum to the following named officers, employes of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at the hearing to be had upon Relator's protest against the tentative valuation of its property, at Washington, D. C., all as described in the petition, to wit: Howard M. Jones, Theodore P. Artaud, James M. Willey, Jr., Charles F. Staples, Charles W. Needham.

(9) The Court erred in holding that in the valuation of carrier property under the Act to Regulate Commerce, the Interstate Commerce Commission acts as appraisers, and that such valuation proceeding is not a quasi-judicial one, and that the plaintiff in error was not entitled to be fully apprised of the evidence considered in making such tentative valuation or afforded an opportunity to verify, test or refute it, contrary to the decision of the Supreme Court in the case of Interstate Commerce Commission v. Louisville and Nashville Railroad Company, 227 U. S. 88.

(10) The Court erred in holding and deciding that the Interstate Commerce Commission was authorized to withhold from the petitioner records, data and information containing evidence necessary to enable it to prosecute its protest against the said valuation at the hearing thereon, contrary to the decision of the Supreme Court in the case of Ex Parte Uppercue, 239 U. S. 435.

(11) The Court erred in holding and deciding that the record did not show that any demand had been made on the Commission to produce at the hearing data or records describing with sufficient precision the particular documents desired.

Wherefore, the petitioner, St. Louis Southwestern Railway Company, prays that the judgment of the Court of Appeals of the District of Columbia may be reversed.

BRIEF.

1. THE VALUATION ACT DID NOT EMPOWER THE COMMISSION TO ABROGATE RELATOR'S RIGHT, AS A PARTY LITIGANT, TO EXAMINE RECORDS AND DATA IN THE POSSESSION OF THE COMMISSION CONTAINING EVIDENCE MATERIAL TO THE PROSECUTION OF RELATOR'S PROTEST.

Analysis of Issue.

The determination of this issue involves the consideration of three questions: first, did the data contain evidence material to the prosecution of the Relator's protest against the tentative valuation; second, if so, was it entitled to inspect them in the absence of the statute; and third, did paragraph (e) of the Valuation Section authorize the Commission to cut off this right? We shall discuss these questions in the above order.

The Records and Data Contain Evidence Material to the Prosecution of Relator's Protest.

Nature of Hearing Upon Protest.

The Commission rules that at the hearing upon a protest against a tentative valuation the burden of the proof is upon the protestant to overcome the prima facie presumption that the tentative valuation is correct. The result is that the hearing upon the protest is closely analogous to a hearing upon exceptions to a Master's report. The primary issue which arises at

such a hearing is whether or not the tentative valuation or the report is sustained by the evidential basis underlying it. To sustain such a burden it is necessary for a protestant not only to introduce testimony tending to show a contrary value, but also that the evidence underlying the report is erroneous or does not sustain the report. An attack upon the sufficiency or reliability of the data or information upon which the report is predicated is necessarily involved in every hearing of this kind. The most superficial analysis of the particular data in question demonstrates that method of attack is practically the only one open to a protestant.

Evidential Bases of Commission's Findings.

The value reported in the tentative valuation is a mathematical calculation based upon three subordinate findings, (1) the so-called cost of reproducing the physical property, (2) the amount of depreciation in the physical property, and (3) the present value of Relator's lands. The reproduction cost is based entirely upon certain average unit prices obtained from statistical data gathered and compiled by the employes of the bureau. The amount of depreciation deducted was determined primarily by the service life of the several physical units also shown by the averages of data similarly gathered and compiled by the Commission's employes. The present value of the lands of Relator was determined by the assess-

ment for tax purposes of certain other property in the vicinity, by the sales of like property in the vicinity and by the opinion of certain unnamed persons as to the value of lands lying in the vicinity of Relator's lands.

Issues at Hearing.

Assuming, but not conceding, that this is the correct method of valuing railroad property, the burden cast upon a protestant can be sustained only by showing that these underlying data are incorrect in one or more of the following particulars: (a) because the facts contained in the data are untrue; (b) because the projects from which the statistical data were compiled were unfairly selected or were unapplicable to the case in which the average is to be used; (c) because other and material relevant data which would have affected the result materially was either not considered or was excluded in making the compilation; and finally, (d) because the actual analyses and compilations of the data were incorrect mathematically in theory, application or arithmetic.

Method of Testing Data.

The Commission states that the statistical data above described was gathered from nation-wide sources, embracing, not only all carriers, but innumerable manufacturers, etc. In order to make the foregoing tests of the accuracy and applicability of the facts

stated in these data, it will be necessary to investigate the original records from these many sources. To ascertain whether the statistical data are complete it will be necessary to compare and analyze the compilations used by the Commission with the results of similar studies of other data made by the protestant. To test the experiential qualifications of the men upon whose opinion various facts are based, it will be necessary to investigate the education, mental habit, the environment and objective point of the person giving the facts, the motive prompting his opinion or his selection, as well as the extent of his information. With respect to the sales of land used as a basis for fixing the land values, it will be necessary to investigate whether or not the property sold was comparable with that of the property of the railroad; whether the sale was voluntary or made under duress or coercion; whether the consideration shown was in fact actually paid; whether the area reported was the correct area, and finally, what effect the inclusion of other sales omitted by the Commission would have had on the unit price. When these facts have been investigated it will then be necessary to recompile and analyze the data to determine whether or not the analysis used by the Bureau's employes was correct mathematically.

Examination Prior to the Hearing Essential.

There is a fundamental difference between the evidence to which access is sought in this case and that which ordinarily forms a predicate of judicial action. The time required to make such examination and analysis means that unless the Relator has the opportunity to examine the data in advance of the hearing, its right to contest the tentative valuation will be denied for all practical purposes. Having elected to predicate its action upon evidence of this kind, the Commission owes the duty to afford Relator the opportunity to meet and refute that evidence according to the exigencies made necessary by its peculiar and unusual character. The tentative valuation of Relator's property slightly exceeds one-third of the value thereof, as shown by the books of the Relator. The controversy, therefore, involves a difference of forty million dollars in value.

Right of a Litigant to Inspect Public Records Containing Evidence.

Data Are Public Records.

Since the data to which access is sought contain evidence which is material to the prosecution of Relator's protest, its right to that evidence will be substantially defeated by denying it the right to inspect and examine it in advance of the hearing. The data sought consist of statistics and records gathered

from a large number of different sources by means of questionnaires, circulars and personal interviews purporting to show the cost and values of railroad property. They were gathered, compiled and analyzed by officers of the Government at public expense in the performance of a statutory duty to value Relator's property and are now preserved in the Commission's files as a permanent memorial of how that duty was performed. They are, therefore, public records.

23 R. C. L. 155;
People v. Peck, 138 New York 386;
Coleman v. Commonwealth, 25 Grat. 865;
Robinson v. Fishback, 135 Ind. 132.

It is horn book law that a litigant has the right to examine public records which will furnish him evidence in his cause.

20 R. C. L. 160.

Cause Need Not Be Pending.

Is it valid objection that the proceeding before the Commission was not a judicial one and hence that Relator was not in the position of a litigant? Under paragraph (j) of the Valuation Section the final value fixed by the Commission is made prima facie evidence of the value in all judicial proceedings, in which the data would be material evidence on behalf of the Relator and to impeach this prima facie show-

ing. It is not necessary in order for the right to examine a public record to arise, that the litigation be pending. The right exists if the data contain evidence material to the prosecution of a claim or a defense in a case which may arise.

Citronelle Case.

This precise question arose in the case of Excise Commission of Citronelle v. State *ex rel.* Skinner, 60 Ala. 812, ... Sou. ...., where, as required by statute, a petition was filed with the Excise Commissioner for issuance of a liquor license. The statute provided that the petition should be accompanied by a recommendation signed by a required number of residents of the community, and that any elector might file written objections to the granting thereof upon which the Commission was required to hold a hearing.

Prior to filing this written objection, Skinner applied to the Commission for permission to inspect the recommendation for the purpose of ascertaining the names signed thereto, and when this was refused, brought *mandamus.* It will be seen that the only interest which the Relator in that case had in the documents was the fact that he was a potential contestant before the Commission, and that the documents in question involved the names of witnesses certifying to the good character of the petitioner for the license, just as in this case the documents contain the names of persons upon whose *ex parte* statements

and opinions of fact the Commission had acted, and Relator here is an actual litigant before the Commission and a potential litigant before a court of justice.

In granting the writ of *mandamus*, the Court said:

> "It is not necessary to now define for all cases the nature of the interest which will entitle the applicant to the access and inspection sought. It is, however, perfectly clear to our minds that if the document may furnish evidence or information relative to any action or proceeding which he is qualified to bring, or which he may be called upon to defend, whether actually pending or not, he is entitled to such inspection (Ferry v. Williams, 41 N. J. Law 332, 32 Am. Rep. 219; Re Caswell, 18 R. I. 835, 29 Atl. 259, 27 L. R. A. 82, 84, 49 Am. St. Rep. 814; Brewer v. Watson, 61 Ala. 311). * * *
>
> "In passing upon an application for license, whether objected to or not, the Commission acts judicially; and, when a contest is instituted by a qualified elector by filing a written objection to the granting of the license, it becomes in effect a suit *inter partes*. * * *
>
> "Unquestionably, we think, every qualified elector, who is a resident of Citronelle, is a potential contestant and litigant before the Excise Commission; and, under the statutes and decisions above quoted, he has such right as entitles him, as a matter of law, to inspect, and if he desires, to make a copy of the recommendation for use in that connection or in that behalf.

> When, having the requisite interest in the document, he makes his application for inspection at a proper time and place, claiming the right in that behalf, the custodian of the document cannot assume that his purpose is otherwise, and cannot, on such an assumption, deny the inspection sought. Otherwise, it is evident the inspection could be had in no case except upon the whim or at the discretion of a suspicious or unreasonable custodian. * * *"

In the case of Ferry v. Williams, 41 N. J. L. 332, the facts were almost identical with those in the Citronelle case, and the Court reached precisely the same conclusion upon similar reasoning.

The Uppercu Case.

The question of the right of the Relator to examine these data in advance of the hearing is foreclosed by the decision of this Court in the case of Ex Parte Uppercu, 239 U. S. 435, 60 L. Ed. 368.

In that case there was an original petition for writ of mandamus to direct the Judge and Clerk of an inferior court to allow a petitioner access to depositions and exhibits on file in a certain case which had been sealed by the order of the lower court and which petitioner alleged were material evidence for him in another case. Said the Court (italics ours):

> "It appears from what we have said that there are documents present within the jurisdiction

that furnish evidence material to the petitioner's case. The general principle is that he has a right to have them produced. It does not matter whether they have been used in the original cause, or not, or to whom they belong. *The right to evidence to be obtained from an existing object does not depend upon having an interest in it, or, in a case like this, upon having an interest in the original cause, or upon the object being admissible or inadmissible in the cause for which it was prepared, or upon the right or want of right of the public to examine the thing. The necessities of litigation and the requirements of justice found a new right of a wholly different kind.* So long as the object physically exists, anyone needing it as evidence at a trial has a right to call for it, unless some exception is shown to the general rule. We discover none here. Neither the parties to the original cause nor the deponents have any privilege, and the mere unwillingness of an unprivileged person to have the evidence used cannot be strengthened by such a judicial fiat as this, forbidding it, however proper and effective the sealing may have been as against the public at large. * * *"

Paragraph (e) of Valuation Section Does Not Abrogate This Right.

Opinion of Court of Appeals.

The majority of the Court of Appeals held that the decision in the Uppercu case, supra, was not controlling in this case, upon the ground that in that case there was no statute expressly conferring upon the Court power to make the order sealing its records, whereas in this case paragraph (e) of the Valuation Section, *as construed by the Commission*, gave to the Commission power to seal its records. Although we do not for a moment concede that the common-law power of a Court to seal its records against unwarranted intrusion by the public is not as complete and as plenary as the power of the Interstate Commerce Commission could constitutionally be under any statute, yet for the purpose of this argument we shall endeavor to demonstrate that there is nothing in the statute relied upon which in any way confers such a power upon the Commission.

The Issue.

The last sentence of paragraph (e) of section 19a, reads as follows: "Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public." The contention of the Commission is that the introductory proviso of this

sentence not only vested in it the discretion to seal the data against the general public, who, without the enactment of the sentence, would have had no right of inspection, but also abrogated any rights of access to the records which other persons might have possessed independently of the statute, and that the exercise of this discretion by the Commission can in no case be reviewed by the courts. Upon the other hand, Relator contends that a proper construction of the statute vests no such discretion in the Commission, and that the power of the Commission to seal the data granted by the introductory proviso of the sentence is limited to the persons to whom the sentence relates in terms—that is, the general public, and does not refer to litigants or other persons who have the right of access to the evidence independent of the statute. To sustain this contention it is necessary to but mention the most elementary canons of statutory construction.

Mischief to Be Remedied.

In Heydon's case, 3 Coke 72, 14 Eng. Rul. Cas. 816, it is said that for the sure and true interpretation of all statutes in general four things are to be considered: "(1) What was the common law before the making of the act; (2) What was the mischief and defect for which the common law did not provide; (3) What remedy the Parliament hath resolved and

appointed to cure the disease of the commonwealth, and (4) The true reason of the remedy." Although that decision is over six hundred years old, it is still a canon of construction. When its principle is applied to the sentence in question, the meaning becomes clear and unmistakable: (1) "Before the making of the act," the common law with respect to the inspection of public documents was, as heretofore stated, the public at large had no right to inspect, but any litigant who required them as evidence had the absolute right of inspection; (2) "The mischief to be remedied" was unquestionably the fact that the *public* at large, in the absence of a litigious interest, was denied access to the records; (3) the "remedy appointed" was that the records were opened to the "*public*" *except* when the Commission for good reasons directed otherwise; (4) the "true reason of the remedy" was to provide "pitiless publicity" for these carrier records in the same way that it is provided for other records. *To open the records to all—not conceal it from all.* Our first contention, therefore, is that under this rule in Heydon's case the sentence in question, both in so far as it deals with the persons to whom the right is given and to the limitations upon that right, relates only to those members of the general public who, except for the provision, would have no right of inspection.

Noscitur a Sociis.

The sentence in question is the second and last sentence of paragraph (e) of section 19a. To give it the construction which appellee seeks to give it would utterly disregard the context. The first and principal sentence provides that the carrier in any such proceeding shall give the Commission free and unlimited access to all its records, books and papers, etc., as well as furnish the Commission copies of the same when requested. These copies are the "records and data" referred to in the succeeding sentence. Ordinarily they might, and in many cases would, contain confidential information which the carrier would much prefer not to disclose. The purpose of the sentence undoubtedly was to give publicity to all these records except in cases where the Commission found them confidential. To torture this sentence into authorizing the Commission to seal its records against all persons, including litigants, and especially when the records constitute the entire evidence in the proceeding, requires that it be entirely wrenched from its context.

Exception Does Not Enlarge Scope of Statute.

In the absence of this statute, there could be doubt that appellant's right of access to these data could not be denied. The sentence in question extends to others the right of inspection which Relator already had but does so subject to an *exception* or proviso, i. e., the Commission may, for good cause,

deny the right. Whether exception or proviso, it requires no citation of authority to sustain the proposition that neither will be construed to extend or enlarge the scope of the statutory clause which it modifies. Especially is this true when to do so would cause the exception or proviso to abrogate common-law rights existing independently of the right given by the statute.

A case very similar to this one is Palacios v. Corbitt, 172 S. W. 777, ... Tex. .... A citizen was held under the common law to be entitled to a writ of *mandamus* to compel county officers to allow inspection of their books to discover misapplication, if any, of county funds. In that case certain statutes gave taxpayers the right to examine certain public records, but did not mention those in question. It was contended that this statute deprived the taxpayers of their common-law right to examine records not so mentioned. Said the Court:

> "If the right exists at common law to inspect all the books and records, * * * we fail to see how the enactment of an article, which gives the public the absolute right to inspect one of the books, can be considered as an implied revocation of the right to inspect all the books under certain circumstances. * * * By article 1758 it is further provided that all books and records and file papers belonging to his office shall at all rea-

sonable times be open to the inspection of any citizen. This provision does not by implication deny the right of inspection of the records of other offices under the common-law rules, but gives an absolute right to the citizens to inspect the clerk's books. * * *"

The cases of State ex rel. Wellford, 110 Tenn. 549, 75 S. W. 948, and State ex rel. Colescot v. King, 154 Ind. 621, 57 N. E. 535, each held that a statute which specifically grants certain citizens or boards the right to inspect public records does not thereby abrogate the rights of other citizens arising independently of the statute.

When a right which already inheres by common law in one class of persons is extended by statute to other persons, with certain limitations on the exercise of such right, such limitations apply only to those persons to whom such right is by statute extended, and do not apply to that class in which the right originally inhered by common law, unless such common-law right is specifically modified by such statute. Repeal of the common law by implication is not favored.

The Commission's Construction of the Statute Does Not Foreclose Judicial Action.

Opinion of Court of Appeals.

The opinion of the Court of Appeals, in dealing with the question of the construction of the statute, holds: "Whether or not this construction, urged by the Relator, is correct, is immaterial. The provision is certainly open to the interpretation placed upon it by the Commission. The latter may have erred, but we cannot, upon an application for a writ of mandamus, review its action for the purpose of determining whether or not it did err" (citing Interstate Commerce Commission v. United States of America ex rel. Members of the Waste Merchants Association of New York, 260 U. S. 32, 67 L. Ed. 5). We respectfully submit that this decision and others referred to, to the effect that "mandamus cannot be held to compel a particular exercise of judgment or discretion or be issued as a writ of error," have no application whatsoever to the case at bar. The point is, the decision of this question as to the right of the carrier to inspect these records and data is not committed finally to the judgment or discretion of the Commission. On the contrary, if under the statute or at common law and despite the statute, the carrier has the right to inspect these data, that right may not be vitiated by interpretation on the

part of the Commission, but is determinable at last by the courts. To say that even though the Commission "may have erred," the Court cannot, upon an application for a writ of mandamus, review its action for the purpose of determining whether or not it did err, is substantially to remove any possibility of enforcing a correct interpretation and administration of the law, for the Commission, being a statutory tribunal, and there being no statutory provision for appeal to the courts in such case, unless mandamus will lie to correct error, it will never be corrected. It is not necessary that the error of the Commission be manifest or obvious, or that the construction contended for by the Relator be to the Court "obviously and certainly right." Nor is it sufficient that the Commission's action rested on "a possible construction of the act." To hold that an administrative board may without possibility of correction cut off a citizen's admitted legal rights by misinterpreting a statute to give it that power is to transfer the legislative (if not the constitutional) power of our Government from Congress or the People to this board.

This error of the majority opinion is clearly shown in the dissenting opinion of Mr. Justice Robb in the court below and the cases cited therein (p. 355).

Mosier Case.

In the first of these cases (Work v. Mosier, 67 L. Ed. 426) there was involved the construction of an Act of Congress, providing for the division of certain lands and funds of the Osage Indians, under which certain duties and a certain discretion were committed to the Secretary of the Interior. The Secretary refused to pay to the Indians certain income due them under the statute as parents of minor children, and imposed on such payment conditions and limitations, asserting that he and the Commissioner of Indian Affairs were vested with a discretion to protect the interest of the minors and that his refusal was in the exercise of that discretion.

It is to be especially observed that the Secretary and the Commissioner were expressly vested with discretion under the act in question which provided "that if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being used or squandered, he may withhold the payment." This Court, however, speaking by the Chief Justice, said:

> "The record shows that the Secretary enlarged this discretion vested in him and his subordinate into a power to lay down regulations, limiting in advance the amount to be paid to the parents to a certain monthly rate, and declaring that no use of the funds would be permitted which did not inure to the separate benefit of the minor."

With respect to which the Court said:

> "* * * However desirable such regulations were, in view of the changed circumstances, we think they were in the nature of legislation beyond the power of the Secretary."

With reference to this particular point also the Court held that error committed by the Secretary was subject to correction:

> "The question whether bonuses were to be included in royalties is a matter of statutory construction, not finally intrusted to the discretion of the Secretary, but determinable in court at the instance of the beneficiaries, as of right."

McAlester Case.

In the case of Work v. McAlester-Edwards Coal Company, decided May 21, 1923, 67 L. Ed. 640 (also referred to by Mr. Justice Robb in the court below), this Court held:

> "Mandamus lies to compel performance by a public officer of a duty made ministerial by the provisions of a statute, although the language of the statute requires in some degree a construction of it by the officer" (syllabus).

The Underlying Principle.

The principle which underlies these cases is clearly and succinctly stated by this Court in Roberts v. U. S., 176 U. S. 221, at page 231, 44 L. Ed. 443, at page 437, which was quoted with approval and followed by the Court in Lane v. Hoglund, 244 U. S. 174, at page 182:

> "Unless the writ of mandamus is to become practically valueless and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law and he must, therefore, in a certain sense construe it in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court

he might successfully plead that the performance of the duty involved the construction of a statute by him, and, therefore, it was not ministerial, and the Court would, on that account, be powerless to give relief. Such a limitation of the powers of the Court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language nor how plainly they violated their duty in refusing to perform the act required."

The application of the principle of these cases to the case at bar is clear. A clear legal right to examine these documents is vested by law in Relator and an equally imperative duty to permit Relator to inspect and examine these records imposed upon the Commission. This right cannot be abrogated, nor this duty avoided under a claim of statutory grant of authority based upon a construction of a statute which will not stand the test of even the most elementary canons of statutory interpretation.

Denial of the Right Was Outside Discretion of Commission.

"Reasons" for the Denial.

Even should the last sentence of paragraph (e) of Section 19a of the statute be construed to place it within the Commission's power to abrogate the

Relator's right to be apprised of the evidence upon which its property rights are to be adjudged, as well as the common-law right to evidence wherever it may be found, nevertheless Relator insists that the denial in this particular case is arbitrary and void. As heretofore stated, the sentence of the statute relied upon expressly requires the Commission, in any order sealing its records, to "state the reasons therefor." In purported compliance with this requirement the order in question assigns the following reasons for its action: "The opening of certain records and data of the Bureau of Valuation to the inspection and examination of other than employes of the Commission * * * (1) would be detrimental to the public interest; (2) would make it impossible for the Commission to secure as reliable and uninfluenced opinions as to land values and price and cost information as it can otherwise secure; (3) would unnecessarily prolong the work and greatly increase the expense thereof; and (4) would seriously interfere with the due performance of the regular duties of the Commission's employes." Taking these reasons at their face value, we shall consider the legal efficacy of each in its order.

(1) "Detrimental to the Public Interest."

This statement is no *reason* in the sense that it is a statement of fact justifying the denial. It can be viewed only from one of two standpoints: It is either a declaration that the opening of the records under all circumstances is contrary to public policy, or it is a conclusion drawn from the "facts" or "reasons" stated in the following clauses. If it is the first, it is clearly beyond the power of the Commission, since Congress has already occupied that field. The very provision of the statute in question is the legislative declaration that as a matter of public policy the records shall be open unless the facts *in any particular case* warrant otherwise. If it is the second, its legal efficacy, of course, depends upon the soundness of the subsequently stated reasons, since under the statute the Commission could predicate its action only on *stated reasons.* These reasons must be valid in order to operate in any case to foreclose the right of the public to have these records and data open to inspection and examination. To say that *any* reason which might please the fancy of the Commission would be sufficient in law is equivalent to saying that *no* reason need be assigned, thus nullifying the express intent of Congress that reasons shall be assigned for any order denying the right of inspection and examination. It was to make sure that the power granted to seal its records against

the general public should not be arbitrarily exercised that Congress required of the Commission a statement of its reasons in the unusual case where an exception to the general rule in favor of the public might be warranted. Unless these reasons are to be sufficient and valid, rather than whimsical or capricious, there might just as well have been no requirement that reasons should be given.

(2) "Make It Impossible to Secure Reliable and Uninfluenced Opinions."

The second reason which the Commission assigns is no valid reason for the denial of the right if it otherwise exists. It might just as well be argued that the witnesses summoned in any trial of a cause would speak more freely and truthfully if they were assured their names would not be made known to the party whose interest might be injured by their testimony. If the argument be admissible, then surely may it be said that the star chamber has been apotheosized! To say that Congress evidently had this in mind when it enacted Section 19a of the Valuation Act is going far afield to support a theory of the most tenuous character. At the present enlightened day, when a fundamental rule actuating all Anglo-Saxon jurisprudence is that justice is best served by the fullest and utmost publicity and disclosure, this statement, coming from a govern-

mental body which was brought into existence for the primary purpose of opening all carrier records and transactions to the most "pitiless publicity," is indeed a remarkable one. The statement means nothing more nor less than that, in the greater interest of justice as well as the "public interest," the opinions of witnesses, unknown to anyone but the officer securing them, which are not subjected to examination or cross-examination by the parties, nor to refutation upon the ground of prejudice, misinformation, or other infirmities, are a more reliable predicate for judicial action than are the opinions of witnesses whose testimony is subjected to those and other tests. In other words, that justice will more likely be done in a proceeding *in camera* than it will in one in which the parties can hear and be heard, because (1) the witness may be tampered with by the parties, or (2) the witness will not give his opinion freely unless assured that it will be kept private and confidential. We have been able to find but two other cases in which so reactionary a contention has been raised, and in both it was swept aside by *mandamus*.

In Jackson v. Mobley, 157 Ala. 108, 27 Southern 590, a writ of *mandamus* was awarded upon the petition of a person indicted for crime, directing the clerk of a court to permit Relator to examine records which

would show the names of the witnesses subpoenaed by the state in his case. Said the Court:

> "Now, has this petitioner any real interest in the keeping of a subpoena docket that *mandamus* may issue to conserve? We think so, and upon the ground that the defendant in the cause has the right to have the opportunity afforded by such a docket, when properly kept, to know upon whom as a witness the power of the Court in that cause has been exercised by the issue and execution of the Court's process. The entries on the docket grow out of the employment of the Court's inherent power in that cause, and, unless some wholesome reason exists to require secrecy, to the end that the Court's function may not be defeated by publicity, no such dangerous qualification of the general policy of the open course of justice should, as administered through our courts, be sanctioned. *No good reason appears to justify the refusal to lay open on the subpoena docket who has been summoned as a witness in the case. Such reason cannot be drawn from an assumption of improper use of the information so offered. On the contrary, a defendant may well, in accordance with the presumption of innocence that attends him until he is convicted, desire to assail the character of the summoned witness, or to present testimony tending to show the entire want of opportunity of such witness to know that of which he is summoned to testify.*"

In the case of Re Egan, 205 N. Y. 147, 98 N. E. 467, 41 L. R. A. New Series 280, *mandamus* was sought

by a taxpayer to compel the Commissioners of the Water Supply of the City of New York to permit him to inspect certain data relating to the awarding of a contract for the construction of a tunnel under the Hudson River. In awarding the *mandamus*, the Court said:

> "But it is said that the papers sought to be inspected are private and confidential, and hence do not fall within the purview of the statute. As to this argument, it is to be observed, in the first place, that a person who sends a communication to a public officer relative to the public business cannot make his communication private and confidential simply by labeling it as such. The law determined its character, not the will of the sender. It may not be denied that there are papers concerning governmental matters which are properly treated as secret and confidential, such, for example, as diplomatic correspondence and letters and dispatches in the detective police service, or otherwise relating to the apprehension and prosecution of criminals; but there is no such feature in the present case. It is true that a disclosure of the objections which led the Commissioners of the water supply to reject the offer of the lowest bidder on contract 90 may restrain objectors from writing thus freely to similar boards in the future; but if such is a consequence of complying with the plain command of a statute it must be endured. A critic who is trying to induce a body of public officers to depart from the customary rule in awarding a

public contract ought not to be unwilling that his reasons should be made known, whatever the consequences to himself."

"Prolong the Work, Increase the Expense and Interfere With Performance of Duties of Commission's Employes."

These "reasons," we submit, are upon their face without legal force. The statute declares that the records shall be open to the public, except for good cause shown. In making this legislative declaration the Congress was as fully advised as the Commission was when it made the order that the opening of such record would necessarily add to the duties of the Commission's employes, and to the time required, and, to some extent, to the expense of administering the law. It was for Congress to say whether or not this expense should be incurred and this time spent, and the Commission has no more right to decline to perform a duty placed upon it by Congress because the performance of the duty will require time and expense than it has to decline to perform it upon the ground that it is impossible of performance or that it would be futile to do so, a right which this Court in the case of Kansas City Southern Ry. Co. v. Commission, 252 U. S. 178, expressly declared that the Commission did not possess. It was for Congress to declare whether or not these records were to be opened to the public; that is, whether or not the expense or the inconvenience

to public officers which would result therefrom would be offset by the benefit which would accrue from publicity. The reasons which Congress had in mind that would warrant the sealing of the records were those which would apply to some particular case or some particular record, but not these which would apply to the opening of all records in all cases. In other words, these two reasons which are assigned in the order would be just as efficacious against the opening of the records at any time or in any place and for all records, as they are against the opening of the records in this particular case. Furthermore, as has heretofore been seen by the other section of the act, the Congress granted appellant the right to a hearing, thereby vesting it with the right of access to evidence useful at that hearing, wherever that evidence might be. Certainly the inconvenience or expense which might accrue to the possessor of that evidence would be no good ground why he should be exempt from giving up the evidence.

Judicial Action Not Foreclosed.

Since the statute relied upon by the appellee requires that the records shall be public, in the absence of an order based upon lawful reasons, an order sealing the records which does not meet this requirement is utterly null and void. The order supported only by reasons which are in law no reasons at all stands

in no better position than it would if no reasons had been assigned. In the face of such a null and void order the statutory right of inspection remains unimpaired. The issue is not so much whether the discretion may be reviewed as whether or not the statutory requirement of an order based upon reasons has been obeyed, for if it has not been, the statutory right of inspection is unimpaired and the order is null and void and without effect as an arbitrary exercise of power.

In the case of Ex parte Bradley, 74 U. S. 364, 19 L. Ed. 214, the following is stated:

> "Mandamus is the proper remedy when the case is outside of the exercise of the discretion of a lower court and is one of irregularity or against a law, or a flagrant injustice or without jurisdiction."

The rule is thus stated in 18 Ruling Case Law, at page 186:

> "If there is an arbitrary abuse of discretion, the courts recognize that this is an exception to the general rule, and mandamus may issue if there is no other adequate remedy, though the result is that the Court is called upon to review the exercise of a discretionary power. * * * The general rule seems to be that, if the officer against whom the relief is sought is clothed with discretion in regard to the act which he has refused

to perform, and of which performance is sought to be compelled, and he has failed to exercise that discretion for a reason which the Court holds to be invalid because beyond the domain of the officer's discretion, a writ of mandamus will be granted to compel him to exercise his discretion in a proper and legal manner, sometimes with an express direction to disregard the improper basis of his previous decision. * * * If the officer has exercised and has exhausted his discretion, and has thereby decided all the questions which come properly and legally within his discretion in the Relator's favor, and has refused to perform the act for a reason neither legally nor properly within the scope of his discretion, the writ will lie to compel him to do the specific act which his own judgment has shown him he should do, upon the ground that the act remaining to be performed by him is a mere ministerial duty."

Mauldin Case. Because of the similarity in the facts, we set out at length the opinion in the case of State of South Carolina ex rel. Mauldin v. Matthews, 81 S. C. 414. The statute provided that the State Board of Pharmaceutical Examiners should alone possess the power of granting license to pharmacists. The statute requires the board to subject every applicant to examination, ex-

cept in the case where the applicant was a regular graduate from a reputable college. Mauldin was a graduate of the University of Maryland, Department of Pharmacy, but the State Board declined to issue him a license, because it held that the University of Maryland was not "a reputable college, because (1) that it does not require as prerequisite to receiving its diploma that the candidate shall have had such practice and experience in drugs as to make it safe to the public for him to practice pharmacy in the State of South Carolina, and (2) that said college requires only two terms of six months each for said candidate to receive his diploma, which period and course of study are too short and inadequate to properly fit any person to practice pharmacy."

Said the Court:

> "In State ex rel. Smith v. Matthews, 77 S. C. 357, 57 S. E. 1099, it was held the statute confers on the Board of Examiners the power to determine whether the college from which the applicant graduated is reputable, and that the power involves the exercise of discretion. * * * The general rule is everywhere recognized that the writ of mandamus will not issue to control the judgment or discretion of a public officer, but only to require the performance of a plain minis-

terial duty. * * * Whether the courts can control the action of officers of official boards vested with discretionary power when they refuse to act in consequence of a conclusion they have reached which is without any foundation in the facts before them, and, therefore, in the view of the Court, capricious or arbitrary, is a question of some difficulty. But it must be answered in the affirmative, on principle as well as authority. This was the view indicated, not only in State ex rel. Smith v. Matthews, supra, and Commissioners of Poor v. Lynah, 2 McCord L. 170, but by Lord Mansfield in R. v. Askew, 4 Burr 2186, 16 Eng. Ruling Cases 760, where the application was to compel the admission of a physician to practice, and it is in accord with the weight of authority. * * *

"The question is not whether Maryland College of Pharmacy ought to have all the requirements that the respondents think essential to make a capable pharmacist. The statute does not confer on the Board of Pharmaceutical Examiners the power to exact a college compliance with its own standards. On that point the General Assembly has assumed the responsibility of da[illegible]er to the public, and has directed that licenses be issued to graduates of reputable colleges—that is, colleges of whose character those of the public, having general acquaintance with the subject, entertain a good opinion. Maryland College of Pharmacy being a college of which such good

opinion is entertained, is a reputable college. The Board of Examiners had, therefore, no discretion to refuse to issue the license to the petitioner, who is one of its graduates."

To the same effect are the cases of State ex rel. Kelleher v. School Board, 134 Missouri 296, 35 S. W. 617, and State ex rel. Yeargin v. Maschke, 90 Washington 249, 155 Pac. 1064, and California Pine Box and Lumber Company v. Mogan, 108 Pac. 882.

2. RELATOR WAS ENTITLED TO A SUBPOENA DUCES TECUM REQUIRING THE PRODUCTION OF THE DOCUMENTARY EVIDENCE UNDERLYING THE TENTATIVE VALUATION AND, FOR THE PURPOSE OF CROSS-EXAMINATION, THE ATTENDANCE OF THE EMPLOYES OF THE BUREAU OF VALUATION WHO GATHERED, COMPILED AND ANALYZED SUCH EVIDENCE.

Analysis of Issue.

From the foregoing we submit that Relator was entitled to the first measure of relief prayed in its petition, that is, to a writ of mandamus requiring the Commission to permit it to inspect and examine the data prior to the hearing before the Commission. It further contends that at the hearing it is entitled to have these data produced in evidence and to have the privilege of cross-examining the men who are responsible for them. This contention is met with the answer: First, that in making both the tentative and the final orders of valuation in valuation proceedings, the Commission is acting in an administrative capacity as a mere appraiser and that for that reason it cannot be compelled to disclose the data forming the basis of such administrative action; second, it is claimed that the data are confidential and are of such a nature that it would be contrary to the public interests to permit them to be made public; third, it is claimed that it has not said that the evidence would not be produced at the hearing, and it may be; fourth, that mandamus is not a proper rem-

edy to enforce the issuance of the subpoena duces tecum by the Commission, and, finally, that the Relator did not specify with sufficient particularity the particular data desired. Since discussion of these defenses will in our opinion affirmatively demonstrate the right of the Relator to the relief sought, we shall discuss this issue by discussing these defenses in the above order.

The Valuation Proceeding Is of a Quasi-Judicial Nature.

Contentions of the Parties.

Appellee contends that the valuation proceeding before the Interstate Commerce Commission was an administrative appraisal of property and that, therefore, under the authority of Omaha v. Omaha Water Co., 218 U. S. 180, the Commission is not obliged to disclose the evidence upon which it acts. Upon the other hand, appellant contends that the valuation proceeding is a quasi judicial one and that, therefore, in accordance with the principles laid down in Interstate Commerce Commission v. L. & N. Railway Co., 227 U. S. 88, appellant, as a party litigant, was entitled to be apprised as to all evidence considered. The determination of this issue involves a consideration of the provisions of the Act to Regulate Commerce relating to the proceeding, and the applicability of the principles in the two cases mentioned to those provisions.

Relevant Provisions of the Statute.

In the appendix hereto, infra, page 67, we have copied in full such sections of the Act to Regulate Commerce as have any bearing upon the several issues of this case. The sections which relate to the present issue are paragraphs (a), (c), (h), (i), (j) of section 19a of the act. Those sections, in substance, provide as follows:

(a) The Commission shall *investigate, ascertain* and report certain findings of costs and values of each carrier's property and to that end is authorized to employ necessary experts and assistants and "examiners who shall have power to administer oaths, examine witnesses and take testimony."

(c) Except as otherwise provided in the act, the Commission is given the power to prescribe the method of procedure to be followed in the investigation.

(h) The Commission shall first promulgate a tentative valuation, and before making it final shall give notice to the carrier and certain other designated persons. Protests against the tentative valuation may be filed by any person within thirty days after such notice.

(i) Upon a protest being filed the Commission shall fix a time of hearing and hear and consider any matter relative and material thereto which may be presented. After the hearing the Commission shall,

to the extent made necessary by the evidence, revise the tentative valuation and make it final. All final valuations "shall be prima facie evidence of the value of the property in all proceedings under the Act to Regulate Commerce and in all judicial proceedings brought under such act, or to enjoin, set aside, annul or suspend any order of the Commission."

(j) If, upon trial of any action involving a final value fixed by the Commission, evidence is introduced which was not heard by the Commission, the Court, before rendering judgment, shall transmit a copy of such evidence to the Commission and stay further proceedings until the Commission shall have considered and reported what, if any, changes in its final value it has found necessary to make, and has made, because of such evidence. After receipt of this report the Court proceeds to render judgment upon the final valuation as thus corrected.

Opinion of the Court of Appeals.

As stated, the contention of the Commission is that under the foregoing provisions the entire valuation proceeding is an administrative appraisal. In the Court of Appeals the dissenting opinion that the entire proceeding is a quasi-judicial one and that after the protest is filed against the tentative valuation the proceeding becomes an adversary one, whereas the separate opinions of the two justices

constituting the majority of the court held that the proceeding is an administrative appraisal up to the time that the tentative valuation was made, and that thereafter the proceeding becomes a quasi-judicial one. As the present issue concerns only the proceeding after the same has reached the hearing before the Commission upon the protest it becomes apparent that the contention of the Commission, in so far as it relates to that issue, was overruled by the unanimous opinion of the Court of Appeals. The reasons which constrained this unanimity of opinion are not far to seek.

The Omaha Case. The case relied upon to sustain this contention is that of Omaha v. Omaha Water Co., 281 U. S. 190, 197, where the City of Omaha had entered into a contract with the water company whereby it was given the option to purchase the latter's water plant at a price to be fixed by a board of appraisers consisting of three engineers. The city undertook to exercise this option, but after the price had been fixed by the appraisers agreed upon it declined to go on with the purchase. The water company thereupon brought suit for specific performance. The city defended upon the ground that the appraisal was void because the appraisers heard evidence in the absence of the city. The Court held that this was not misconduct, because the city

had agreed to accept the price to be fixed by the appraisers, not as arbitrators adjusting a dispute, which would require a hearing, but as experts whose opinion might be formed from "matters within their knowledge," or "from any other source," and "who were at last to act upon their own judgment." Said the Court, speaking through Mr. Justice Lurton:

> "This was not a board of arbitration. An arbitration implies a dispute and involves ordinarily a hearing and all thereby implied. The right of notice to hearings, to produce evidence and to cross-examine that produced is implied when the matter to be decided is one of dispute and difference. But when, as here, the parties have agreed that one should sell and the other buy a specific thing, and the price should be a valuation fixed by persons agreed upon, it cannot be said that there was any dispute or difference. * * * This seems to be the difference between an arbitration and an appraisement, though the first term is often used when the other is the more appropriate.
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> "Counsel have cited and pressed upon us the case of Continental Insurance Co. v. Gaunt, 125 Fed. 589 (Sixth Circuit Court of Appeals, opinion also by Justice Lurton), as a case where an appraisement of a fire loss was set aside because evidence was heard in the absence of the parties. But that was a case where the full amount of the insurance was claimed as the extent of the loss. This was denied. It was, there-

fore, a plain case of the submission of a dispute or difference which had to be adjusted. The rule applicable to a judicial proceeding therefore applied. * * * *The dispute concerned the thing which had been destroyed, the value of something which was not to be inspected and valued from observation, because it was not in existence. Evidence was, therefore, essential to show what had been destroyed, as well as its value.* * *

"*If this was a technical arbitration of a matter of dispute or difference between the parties, to be heard and decided upon evidence submitted, the examination of the company's books without the consent of the city or the presence of its representatives, would be such misconduct as would vitiate the award. In such an inquiry the rules relating to judicial inquiry would apply* (citing cases). But in an appraisement * * * the appraisers were not rigidly required to confine themselves either to matters within their own knowledge or those submitted to them formally in the presence of the parties; but might reject, if they saw fit, evidence so submitted and inform themselves from any other source, as experts who were at last to act upon their own judgment" (citing cases).

Commission Not a Board of Appraisers.

So far from sustaining the Commission's contention the Omaha case sustains Relator's position. Here the Commission is not an agreed board of appraisers. The carrier certainly has never agreed

to be bound by the value fixed. The act makes no attempt to make the Commission's findings conclusive. The Commission is not a body of experts. The act does not contemplate that the Commission shall go out, view the properties of the several carriers and report their respective values from its own knowledge and judgment. The act clearly intends that evidence must be considered in making the tentative valuation, and is filled with provisions for "employment of experts," of "examiners to take testimony," of "protests," "hearings," "evidence," "findings," etc. Even prior to the tentative valuation these provisions seem to make the proceeding a quasi-judicial one. Certainly upon the filing of the carrier's protest this valuation proceeding became an adversary judicial proceeding inter partes. At once "a matter of dispute or difference between the parties" is involved, which is "to be heard and decided upon evidence submitted," and "in such an inquiry the rules relating to judicial inquiry would apply." Indeed, the Interstate Commerce Act expressly provides (Section 17) that "proceedings before it (the Commission) • • • shall conform as nearly as may be to those in use in courts of the United States." It is manifest, therefore, that the Congress intended the Commission to administer Section 19a of the act in precisely the same manner that it had administered others—by

giving all parties, including its own employes, an opportunity to introduce evidence and then to decide the issues upon the evidence thus introduced.

Judicial Review.

Furthermore, all doubt that such was the intention is removed when the provisions of paragraph (j) of the section are considered. In view of the fact that this issue as to the value of a carrier's property is constantly arising not only in proceedings before the Commission, but in judicial controversies involving the Commerce Act some procedure had to be provided for a judicial review of the findings as to value by the Commission. In so far as the judicial proceedings are concerned, it was doubtless recognized that the courts could not constitutionally be deprived of the jurisdiction to decide what the value of the property was, upon facts introduced whenever that fact was drawn in issue in such a proceeding (Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287). Two alternatives were therefore open. The courts could have been left to reach their conclusions independently of any action of the Commission, or they might be required to base their conclusions, in part at least, upon the evidence considered by the Commission. The latter alternative was adopted and any judgment reached by a court with respect to the value of a carrier's property in a case involving

the Act to Regulate Commerce *must be entirely based upon the very evidence* which the Commission considered in making the finding. How could the Court make such a finding if there were no record of a substantial part of the evidence considered by the Commission, or, especially, if the Commission made its tentative finding without evidence? This paragraph (j) of the act of necessity restricts the Commission to a proceeding which determines value upon evidence which a court can consider, when under the act it becomes necessary for a court to pass upon that question.

The Commission Is Obligated to Disclose the Evidence.

Judicial Effect Given Order.

That Congress intended that the valuation proceeding should be of a judicial nature is shown by the effect which it gives to the order of the Commission made as a result of the proceeding, not only in making such order prima facie evidence of the valuation of Relator's property in all proceedings (including judicial proceedings), but in authorizing the Commission to use the valuation and the data supporting it for determining (1) reasonable charges under paragraph 5, section 1; (2) amount of sale price and security issues upon the purchase by one carrier of the property of another under paragraph 6b, section 5; (3) reasonableness of aggregate level

of rates of the country as a whole, paragraphs 2 and 4, section 15a; (4) amount of excess earnings to be recaptured from carriers under paragraph 6, section 15a; (5) amount and conditions of security issues by carriers under scetion 20a of the act. These particular data were expressly used by the Commission in the 1920 Increased Rate case, 58 I. C. C., Rep. 220, and the 1922 Reduced Rate case, 68 I. C. C., Rep. 676, in determining reasonable rates under section 15a.

Effect Already Given.

Orders of the Commission based on these data for any of the purposes named above may become subject to judicial review in many cases, but in others, such as the two cases last mentioned, because of the manner in which the data is used, direct judicial review is impossible. Can it be possible that Congress intended to enact, or that it could constitutionally enact a law giving to a bureau authority to determine an issue of fact involving property rights without affording the person whose property was involved an opportunity to be heard with respect thereto? Surely, a proceeding where one's property rights may be taken through administrative action without anything more than a mock hearing in which it is neither apprised of the evidence considered nor given opportunity to introduce relevant evidence would constitute a failure of due

process under the Fifth Amendment to the Constitution.

Bratton Case.

A recent decision of this Court is apposite (R. W. Bratton et al. v. William C. Chandler et al., 260 U. S. 110). Briefly stated, the District Court for the Western District of Tennessee, consisting of three judges, declared a statute of Tennessee having to do with the regulating and licensing of real estate brokers and salesmen unconstitutional, on the ground that the Real Estate Commission created under said act was authorized "not only to require an applicant to furnish evidence of his qualifications, but to *procure* independently of the applicant any proof it may deem desirable, and this without any provision for notice or opportunity to meet the evidence so procured, nor even to be advised of the nature or source of the evidence. Because of this delinquency the Court was of opinion that the act did not afford due process of law and was, therefore, unconstitutional and void."

The District Court, in commenting upon the provision which it held to be violative of the constitutional guarantee of due process of law, "expressed a doubt that any rulings or regulations that might be promulgated by the Commission would cure the defect of the statute."

This Court reversed the decision, not by upholding the right of the Legislature of Tennessee to grant the

Real Estate Commission power to procure by secret processes evidence upon which it found its action in licensing or refusing to license brokers and salesmen, but by construing the law as not evidencing an intent on the part of the Legislature to grant a power so clearly unconstitutional.

We quote from the opinion of the Court as follows:

> "The views of the Court are stated with great force, but we are unable to yield to them—their reasoning or conclusions. By section 8, as we have said, the Commission is 'authorized to *require* and *procure* (italics ours) any and all satisfactory proof as shall be deemed desirable in reference' to the conditions and qualifications of applicants for licenses. The words are 'require and procure.' They seem to have independent and cumulative meaning, one demanding publicity, the other permitting secrecy. But to this possibility we are not disposed; we prefer the admonition of the cases and their decision as expressed in United States v. Jin Fuey Moy, 241 U. S. 394, 401, as follows: 'A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon this score' (United States v. Delaware & Hudson Company, 213 U. S. 366, 408).
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> "In the cited case the admonition is said to express an elementary rule; and, we think, the statute of Tennessee attracts instead of repels the admonition. The statute is drawn with care to details and their importance, importance to the business regulated and the persons who will

desire to engage in it; action under it was intended, therefore, to be open and direct, not to be remitted in any part to secrecy, prejudice or intrigue.

"In conclusion, we may say that if the word 'procure' is more than a tautological repetition of the word 'require,' it was only to confer the power of affirmative direction upon the Commission, *necessarily to be exercised in supplement to the action of the applicant and with the publicity and opportunity of the applicant to meet adverse evidence.* And the act construed as we construe it will take no power from the Commission necessary to the performance of its duties, and will leave no power with it that it can exercise to the detriment of any right assured to an applicant for a license by the Constitution of the United States."

Right to a Hearing.

But no such construction can be given the act. Paragraph (a) of section 19a directs the Commission to investigate, ascertain and report certain costs and values. Paragraph (h) of the same section provides that the carrier shall be given an opportunity to protest against the tentative valuation, and paragraph (i) gives it the right to a hearing, including the right to introduce evidence. Of what value is this right if the carrier be denied the right not only to show that evidence upon which the tentative valuation is based is false, but even to know what that evidence is?

Section 17 of the act provides that "proceedings before it (the Commission) * * * shall conform as nearly as may be to those in use in courts of the United States." The one characteristic of our form of jurisprudence is the fact that no judgment is ever based upon any evidence except that which has been openly introduced at a public trial, subjected to the cross-examination and right of refutation of all interested parties.

Carrier Does Not Ask Hearing Other Than That to Which It Is Legally Entitled.

The opinion of the learned Chief Justice below in denying Relator's right holds that if the Congress had intended that the carrier should have the right to cross-examine the persons who gave the information and scrutinize the documents on which the Commission acted, "it would have provided for a hearing at which the carrier would have the right to be present and take such steps as it might deem necessary to protect its rights." No claim is made by the carrier to a right to a hearing *prior to the time the tentative valuation is announced.* Nor is such a hearing essential to the protection of its rights. The hearing before the Commission "at the later stage in the process of valuation" is sufficient and is all the carrier asks in the way of a hearing, *provided only that the legal requirements are observed,* so that it may indeed be "given a full opportunity to establish that the valu-

ation fixed is not correct." Such full opportunity, however, is not afforded when the carrier is compelled to enter upon such hearing without any knowledge of the facts forming the predicate for the valuation announced, and to which is attached prima facie weight, and which the carrier must rebut and overcome.

True, as that opinion further remarks, "Presumably, the relator knows the value of its property." But knowing a fact is sometimes different from proving that fact according to legal requirements. An accused may know that he is wholly innocent, and therefore it might be said that he should be in a position to prove it, but this supposition has never been held a sufficient ground for denying the accused full and detailed knowledge of the charge against him and of the evidence offered in support of such charge before he is put upon his proof.

Parties Must Be Apprised of Evidence.

The provisions of the Act to Regulate Commerce which relate to hearings with regard to rates are almost identical in terms with those in section 19a. In both the governing words are "investigate" and "hearing." Some years ago the Commission took the position that it could base its findings in rate cases upon evidence not received at the hearing, and which was undisclosed to the carrier. In other words, it took then the same position with respect to rates as it now takes with respect to Valuation. But this

Court in that case (Interstate Commerce Commission v. L. & N. Ry. Co., 227 U. S. 88, 57 L. Ed. 431) overruled the contention in the following forceful language:

> "*But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless.* And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body or tribunal under our government. It would mean that where rights depend upon facts, the Commission could disregard all rules of evidence and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the constitution's condemnation of all arbitrarily exercised power. * * *
>
> "The Government further insists that the Commerce Act requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative power to make rates, it can act, as could Congress, on such information. * * * *But such a construction would nullify the right to a hearing, for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain*

or refute. * * * The Commission is an administrative body, and even where it acts in a quasi judicial capacity, is not limited by the strict rules as to the admissibility of evidence, which prevail in suits between private parties (cases). But the more liberal the practice in admitting testimony, the more imperative the obligations to preserve the essential rules of evidence by which rights are asserted or defended. *In such cases, the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given the opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.* In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the findings, for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained upon the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding."

Importance of Right.

In the discussion of the first proposition of the brief the nature of the data sought was described at some length, and what was said there with respect to the importance of the right of examination prior to the hearing is even more applicable to its importance at the hearing. In that discussion it was shown

that the Commission in fixing the values relied in a large measure upon the opinion of employes unknown to the Relator as to prices, costs and values of lands, based to a great extent upon opinions of fact, expressed by sundry unnamed persons. The importance of testing this sort of evidence cannot be stated in clearer language than that used by the Commission in the appendix as a justification for its action in rejecting the opinion of experts. Said the Commission, in the statement of its method in Exhibit 2 to the petition, at page 190:

> "The unreliability of mere opinion evidence is well understood by all those who have ever had experience with it. An opinion is personal to the man who gives it. It depends upon his education, his mental habit, his present mental state. It is influenced by his environment and is often prompted by the objective point which he desires to reach. The same man may hold different opinions upon the same subject at different times.
>
> "Perhaps the most serious infirmity of opinion evidence is that the witness may be selected at the will of the one producing him."

In an ordinary court the "education," experiential qualifications, the "mental habit" and "state," the "environment," "objective point," of the witness and the motive prompting his selection are tested by a public cross-examination of the witness. But how can the carrier test the potential infirmities of this

character of evidence if it is not only not permitted to cross-examine the witnesses, but is not even told who they were or what they said so that it may offer evidence in refutation?

Again, in using cost and value data in the manner used by the Commission, it is highly important that the facts contained in the data shall be true; that the data used to determine the cost or value of a given unit of property shall be applicable from the standpoint of similarity of conditions and time; that the data shall have been honestly and efficiently selected, and other relevant data, which would have changed the result, shall not have been omitted, and, finally, that the analyses and computations shall be arithmetically accurate and correct. The importance of these elements not only is apparent, but was recognized by the Commission, for in Exhibit 2 (p. 291) it states:

> "The carriers * * * offered to supply the Commission with a great number of completion reports giving in detail the cost of various projects. It was felt, however, that it would be impossible, as a practical matter, to compile and analyze all cases of this kind * * * and that if the carrier was allowed to select, there would be some possibility that the Commission might be furnished with jobs not fairly illustrative. Carriers were, therefore, requested to file with the Bureau of Valuation a list of all such projects which could be supplied, from which

the bureau selected certain, chosen sometimes at random, and sometimes because of the nature of the work they embraced."

Is it not possible that the Bureau of Valuation may have made mistakes—that such a "random" selection might not be a fair one—that its computations may have been erroneous? Is it to be presumed that these employes of the bureau cannot err? And if that is not to be presumed, then how can it be determined that they did not err, however honestly, unless the parties to the case are permitted to check and verify their work?

Duty of Commission.

We conclude, therefore, that the valuation proceeding before the Commission was quasi-judicial in its nature, that the Commission could base the findings of costs and values, required by the act to be made, only upon evidence received at a hearing, or at least evidence of which the parties had been apprised, and which the parties had been given the opportunity to test and refute. Furthermore, this evidence constitutes an integral part of a "proceeding" under the Interstate Commerce Act (Deere Plow Co. v. Jones, 68 Kan. 650, 75 Pac. 1039; American Shipbuilding Co. v. Whitney [J. Day], 190 Fed. 109). And such proceedings under the express terms of paragraph (1) of section 17 of the act (infra, p. 64), "*shall be public at the request of any party interested.*"

Neither the Evidence Nor the Commission Privileged.

The Claim of the Commission.

As heretofore seen, the principal reason advanced by the Commission for declining to grant Relator's motion was that to do so would be contrary to public policy in that it would expose private and confidential information received from third persons not parties to the controversy. The opinion of the Chief Justice in the court below would seem to sustain this contention, although in the latter part of the opinion it is expressly stated that at the hearing the matter has become a judicial proceeding. This part of the opinion reads as follows:

> "We think it is true that persons who would be willing to speak freely and truthfully from an abundance of information upon the subject about which they talked, if they were assured their names would not be known to the carriers, might, because of their business or social relations, prove very reluctant witnesses on the stand and might give only such information as was elicited from them by persistent questioning. Congress evidently had this in mind when it enacted section 19a. If it intended that the carrier should have the right to cross-examine the persons who gave the information and scrutinize the documents on which the Commission acted, it would, we think, have provided for a hearing at which the carrier would have the right to be

present and take such steps as it might deem necessary to protect its rights. But it did not do so. Instead, it provided for a hearing before the Commission at a later stage in the process of valuation at which the carrier is given a full opportunity to establish, if it can, that the valuation fixed is not correct. Presumably, the Relator knows the value of its own property (Chicago, Burlington & Quincy Railroad Co. v. Shafter, 49 Neb. 25, 31), and can prove it without calling upon the Commission to disclose its confidential information upon the subject."

If the opinion just quoted correctly construes the Valuation Act, then the "hearing" provided for by the act is a misnomer and a mockery, because one cannot protect its property rights in a proceeding in which an ex parte finding of fact based upon ex parte statements and opinions of unknown persons, not only whom it cannot cross-examine, but which statements and opinions it is not permitted to see, is presumptively made final. As heretofore stated, having been given a hearing under the act, Relator was entitled to all that that word meant, and that included the right to introduce all competent relevant evidence.

Right to Evidence.

Since the dawn of common-law jurisprudence, and certainly since John De Waltham's subpoena in chancery (about 1375) and the statute of Elizabeth

(1562 St. 5. Eliz. c. 9, s. 12), it has been recognized that:

> "It is the undoubted legal constitutional right of every subject of the realm who has a cause depending to call upon a fellow subject to testify what he may know of the matters in issue; and every man is bound to make the discovery, unless specially exempted" (1802 Smith, M. R., in Butler v. Morris, McNally Ev. 253).

Or as it is sometimes expressed:

> "It is a maxim of indubitable certainty 'that the *public* has a right to every man's evidence'" (Duke of Argyle's Argument [in 1742] for 'Bill for indemnifying evidence,' Cobbett's Parliamentary History, XII, 675, 693).
>
> "This testimonial duty to attend and disclose all that is desired for the ascertainment of truth applies to every form and material of evidence whatever. In particular it applies to such evidential material as exists in a person's hands in the form of documents. 'There is no difference in principle,' said a great judge, 'between compelling a witness to produce a document in his possession under a subpoena duces tecum (in a case where the party calling the witness has a right to the use of such document) and compelling him to give testimony when the facts lie in his own knowledge.' This much is unquestionable; for to give up facts possessed by physical control is no different from the giving up of data possessed by mental impression" (4 Wigmore on Evidence 2193).

"Confidential" Data Are Not Privileged.

The excuse that these data are private and confidential information either of third persons, the Government or of the Commission or its employes, ought to have no standing whatever in a court of justice. In the case of Boston & Maine Railroad Co. v. State of New Hampshire, 77 Atl. 996, the New Hampshire Court said:

> "In the legal search for truth made for the protection of members of the community, the parties and the state are entitled to all evidentiary matter in the knowledge or control of each member of the community which will aid in the inquiry. As to some matters, greater injustice would be done by compelling the witnesses to disclose than by determining the controversy without their aid. Such matters are exceptions to the general rule to give evidence."

In that case it was held that a witness in a tax controversy having no immediate interest therein could not refuse to answer questions or produce documents for the reason that the same might result to his pecuniary disadvantage.

In the case of Wertheim v. Continental Ry. and Tr. Co., 21 Blatchford 246, 15 Fed. 716, the Court said:

> "It may be inconvenient and sometimes embarrassing to the managers of a corporation to require its books and papers to be taken from its

office and exhibited to third persons, but it is also inconvenient and often onerous to individuals to require them to do the same thing. Considerations of inconvenience must give way to the paramount right of litigants to resort to evidence which it may be in the power of witnesses to produce and without which grave interests may be jeopardized and the administration of justice thwarted."

Commission not Privileged.

The fact that these evidential data are in the possession of governmental officers does not in the least restrict Relator's right to have them produced. No officer of the Government, as such, has any privilege as a witness. This claim, which has been frequently raised by administrative officers in bureaus during recent years, is termed by the learned author of Wigmore on Evidence as a "bastard communications-privilege." Whenever this privilege has been claimed it has aroused very strong and forcible language upon the part of the Court called upon to deny it. (See the opinion of Mondelet in Gugy v. Maguire, 13 Sou. Can. 33, and also that of Chief Justice Agnew in Hartranft's Appeal, 83 Pa. 433.) The following quotation from paragraph 2375 of Wigmore on Evidence is a vigorous discussion of this alleged privilege:

"(3) *The question is then reduced to this, whether there are any matters of fact, in the possession of officials, concerning solely the internal*

affairs of public business, civil or military, which ought to be privileged from disclosure when material to be ascertained upon an issue in a court of justice? Most emphatically there are not. In any community under a system of representative government and removable officials, there can be no facts which require to be kept secret with that solidity which defies even the inquiries of a court of justice. 'To cover with the veil of secrecy,' said Patrick Henry, 'the common routine of business is an abomination in the eyes of every intelligent man and every friend to his country.' *Such a secrecy cannot even be legitimately desired. It cannot be desired for any but the purposes of partisan politics or personal self-interest.* The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. * * * The facts must constitutionally be demandable, sooner or later, on the floor of Congress. To concede to them a sacrosanct secrecy in a court of justice is to attribute to them a character which for other purposes is never maintained—a character which appears to have been advanced only when it happens to have served the interests of some individual to obstruct investigation into facts which might fix him with a just liability. * * *."

The Burr Trial. Probably the most famous case in which this claim of the "bastard communications-privilege" was raised was in the trial of Aaron Burr for treason. In that case the defendant moved for the issuance of a subpoena duces

tecum directed to President Jefferson requiring him to produce certain letters alleged by the defendant to contain evidence material to his defense. The Government's attorneys opposed this motion upon the ground that the communication was privileged as being a state secret, and there followed one of the most brilliant arguments of the trial. The following quotation from the argument of Mr. Botts, attorney for the defendant, is taken from Robertson's "Trials of Burr," Vol. II, pages 517-519:

> "I can never sufficiently express my detestation of this system of state secrecy. I can never express in terms sufficiently strong that detestation and abhorrence which every American should feel toward a system of state secrecy. It can never conduce to public utility, though it may furnish pretext to men in power to shelter themselves and their friends and agents from the just animadversion of the law. * * * They (the people) ought to know the particulars of public transactions in all their bearings and relations so as to be able to distinguish whether and how far they are conducted with fidelity and ability; and with the exception of what relates to negotiations with foreign nations, or what is called the diplomatic department, there ought to be nothing suppressed or concealed. * * * I wish I knew on what principle the agents of the Government can be excepted from this rule, which applies to all other individuals, or on what ground can this letter or any part of it be withheld. * * * I will again predict that if a secret

inquisitorial tribunal can be established by your decision now, to go down with the sanction of your opinion to posterity as precedent for other tribunals, * * * if you determine that we be deprived of the benefit of important written or oral testimony by the introduction of this state secrecy, you lay without intending it the foundation for a system of oppression."

The decision of Chief Justice Marshall upon this motion was in his usual clear and forcible language. It is found in Volume I of Robertson's "Trials of Burr," at page 182, and the following quotation is taken therefrom:

"If, then, as is admitted by the counsel for the United States, a subpoena may issue to the President, the accused is entitled to it, of course; and, whatever difference may exist with respect to the power to compel the same obedience to the process, as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it. The guard furnished to this high officer, to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a court after those subpoenas have issued; not in any circumstance which is to precede their being issued. If in being summoned to give his personal attendance to testify, the law does not discriminate between the President and a private citizen, what foundation is there for the opinion, that this difference is created by the circumstance that his testimony depends on a paper in

his possession, not on facts which have come to his knowledge otherwise than by writing? The Court can perceive no foundation for such an opinion. The propriety of introducing any paper into a case, as testimony, must depend on the character of the paper, not on the character of the person who holds it. A subpoena duces tecum, then, may issue to any person to whom an ordinary subpoena may issue, directing him to bring any paper of which the party praying it has a right to avail himself as testimony, if indeed, that be the necessary process for obtaining the view of such paper.

"When this subject was suddenly introduced, the Court felt some doubt concerning the propriety of directing a subpoena to the Chief Magistrate, and some doubt, also, concerning the propriety of directing any paper in his possession, not public in its nature, to be exhibited in court. The impression that the questions which might arise, in consequence of such process, were more proper for discussion on the return of the process than on its issuing, was then strong on the minds of the judges; but, the circumspection with which they would take any step which would, in any manner, relate to that high personage, prevented their yielding readily to those impressions, and induced the request that those points, if not admitted, might be argued. The result of that argument is a confirmation of the impression originally entertained. *The Court can perceive no legal objection to issuing a subpoena duces tecum to any person whatever, provided the case be such as to justify the process.*"

To cite further authority would be a work of supererogation. If documents in the hands of the President of the United States are not privileged, certainly these in the hands of the Bureau of Valuation gathered in performing a public work at public expense, have no sacrosanct character and like all other evidence must be made available to a party litigant upon its demand.

Commission Had No Discretion to Deny Subpoena.

Power of Commission to Issue.

Since, then, the documents sought contain material which Relator was entitled to have produced at the hearing, which right it seeks to enforce by asking for the issuance of a subpoena duces tecum, it becomes necessary next to determine whether or not the action of the Commission, in failing to issue the subpoena (which was tantamount to an order declining to issue the subpoena [Loewenthal v. People, 61 N. E. 462 (Ill.); People v. Richmond County, 20 New York 252; Espy v. Bond, 82 Pac. 129 (Wash.)]) can be controlled by mandamus.

Under Section 12 of the Act to Regulate Commerce the Commission is given power to issue a subpoena duces tecum requiring the attendance and testimony of witnesses, and the production of books, papers and documents relating to any matter under investigation and under the Compulsory Testimony Act, February

11, 1893, 27 Stat. Larg. 443, disobedience to such a subpoena is made a punishable offense.

Opinions of the Court of Appeals.

Having the unquestioned power to issue the subpoena requiring the production of these data, the question next arises whether or not the duty placed upon the Commission by the statute to afford Relator a hearing did not require it to issue the subpoena. As heretofore pointed out, while the Justices of the Court of Appeals were unanimously of the opinion that Relator was entitled to have these data produced at the hearing, the judgment of the majority of that court was that it was not entitled to the subpoena duces tecum, but upon entirely different grounds. The opinion of the Chief Justice denied the right to the subpoena upon the ground that it was unnecessary, while the concurring opinion, admitting that it was necessary, denied it upon the ground that the motion therefor had not described the documents sought with sufficient particularity. We shall therefore discuss these two grounds in the above order.

Necessity for the Subpoena.

In discussing this question the opinion of the Chief Justice, after calling attention to the fact that the order of the Commission which sealed the records and data was subject to the qualification therein expressed: "Unless and until offered in evidence either

in a valuation hearing under the provisions of Section 19a of the Interstate Commerce Act or in a court of competent jurisdiction," reads as follows:

> "This clearly means that the data and other matters covered by the order may be offered in evidence on the hearing before the Commission and hence that the Relator is not denied the right to offer it if it thinks proper to do so. The subpoena duces tecum to require the employes of the Commission to produce the records is entirely unnecessary. Those employes are subject to the direction of the Commission, and in the proper case they will be undoubtedly produced with records pertinent to the issues to be tried at the request of anyone entitled to have them testify" (Rec., p. 352).

We are somewhat embarrassed in attempting to reconcile this statement holding that the subpoena is unnecessary because the carrier can obtain the relief by motion before the Commission, with the preceding paragraphs of the opinion, to which reference has already been had, which hold that these records are confidential information of the Commission to which the carrier has not the right of access because "presumably the Relator knows the value of its own property * * * and can prove it without calling upon the Commission to disclose its confidential information upon the subject."

Prior Order Essential.

If the records are confidential information whose production cannot be enforced, then the right of the Relator to have them produced is subject to the election of the Commission to produce them. Of course, a right which rests in the arbitrary will is not a right in any proper sense. If the opinion means, as we think it does, that although confidential, the Commission is obliged to produce them upon demand of the carrier, then we say that the carrier is entitled to the issuance of the subpoena in advance of the hearing so that it may know that the testimony is going to be produced and can govern its preparation for the hearing accordingly. This is particularly true when the voluminous nature of the records is considered and the kind, extent and expense of the investigation which their production is going to require are considered. Furthermore, if the Relator is entitled to have the records produced its right to have a subpoena therefor should not be denied upon the assumption that the Commission will require its employes to be present at the hearing. The employes or the records may at that time be inaccessible. If the Relator has the right to have these records produced, the only orderly course in order to insure their production is the issuance of such a subpoena.

Assumption That They Will Be Produced Is Unwarranted.

If, on the other hand, the opinion sustains the contention of the Commission, which is unequivocally that its order means not that the Relator can secure the introduction of this evidence, but that the same, if introduced at all, will be introduced either by or with the permission of the Commission, then we are immediately thrown back upon the question which has heretofore been discussed, as to whether or not the Relator has the right to have them produced. Since this is the position of the Commission, and of its general counsel, there would seem small warrant for the belief that "without this subpoena the employes of the Commission will undoubtedly be produced, with records pertinent to the issues to be tried, at the request of anybody entitled to have them testify." We respectfully submit that the litigants' right of process should not be controlled by indulgence in suppositions of this sort, especially in the case where there is little or no warrant for the supposition.

The Data Were Sufficiently Described.

Commission Considered Description Adequate.

The fifth ground of the Commission's motion to dismiss the petition was that Relator's application to the Commission for permission to inspect was "entirely general in character and in

said motion no particular records or particular data are mentioned, specified or designated." A brief review of the facts relative to this issue, many of which have already been stated, is necessary. The sole source of information that the Relator has that these data and records exist lies in the appendix to the tentative valuation in which the Commission analyzes the methods used in reaching the tentative valuation. In its motion the Relator, after referring to this source, described the data in practically the same language in which the Commission described it in this analysis of methods. That this description was sufficient to enable the Commission to know what data was sought is shown by the fact that not only did the Commission not deny the motion upon the ground that the data was not sufficiently described, but in the order sealing with the data it described them in substantially the same language that the Relator used in its motion. If the description of the data used by Relator was sufficient to inform the Commission of the documents which it denied, that was all that was required. That it was so is shown by the fact that the Commission considered that description sufficient to inform not only its employes, but all persons of the data which was sealed against the public. If the motion was sufficiently definite to warrant an order sealing the records, was it not sufficiently specific to warrant one opening them? There was no attempt in the motion of the Relator to en-

gage in a fishing expedition amongst the records of the Commission. All that it desired to do was to examine those certain documents and records upon which the Commission says that the tentative valuation of its property was based. So far from indicating a desire to roam promiscuously through the records of the Bureau, the application is *specifically restricted to those data considered in making the tentative valuation which was in issue in that proceeding.*

The Concurring Opinion.

The concurring opinion of Mr. Justice Smith, after holding that the Relator was entitled to offer in evidence these data for the reason that if this right were denied, the carrier would be deprived of the protection which Congress gave it by granting it the right to protest and to a hearing, denies the right to a subpoena in this case in the following language:

> "Inasmuch as it does not appear, however, from the record in the case that any demand was made on the Commission to produce at the hearing any specified paper or record, or that the production of any such paper or record at the hearing was refused by the Commission or that a subpoena duces tecum for the production of specific papers or records was denied, I concur in the conclusion reached by the Chief Justice."

An Impossible Burden.

We respectfully submit that the restriction imposed by Judge Smith upon the right which he concedes the carrier to possess puts that right beyond the possibility of effective assertion under the circumstances of this case. It makes it possible for the Commission itself to be the final arbiter of the right by the simple expedient of so completely sealing these records that the carrier can have no chance of knowing what particular paper or record it requires as evidence. The Commission, therefore, by pursuing a policy of the utmost secrecy finds the most absolute protection under the rule announced. If the carrier can be kept in the dark the data will never be brought to light, for how will any interested party be in a position to demand the production of "a specified paper or record" when he has been effectually blocked from all opportunity of knowing what papers or documents constitute the record or what weight has been accorded them in the formulation of the Commission's conclusions? The rule announced is the exact equivalent of one providing that if an offense be sufficiently aggravated it will pass beyond the reach of court process.

Correct Principle.

The law is intended to fit into or at least to comport with the exigencies of human relations. No hard and fast rule which hides the truth and denies justice in the average case can long survive as the law. If, therefore, the rule announced by Judge Smith did not run directly counter to accepted precedents we would nevertheless feel at liberty to deduce on principle that it is erroneous, because it does not meet the requirements of simple justice. But deduction and inference are unnecessary.

The rule applicable to this case is thus stated:

> "A subpoena duces tecum must specify with such precision as is possible the particular books or documents desired, and party is not entitled under such writ to have brought into the court a mass of such books and papers that he may search to gather evidence; but the description need not be exact and full in all particulars and is sufficient if the books and papers are designated with reasonable certainty so that the witness may know what is required of him. • • • A petition for a subpoena duces tecum is sufficiently definite with respect to the books or documents required when the description is specific enough to enable the witness to produce them without uncertainty" (40 Cyc 2168, 9; In re Storer, 63 Fed. 564; U. S. v. Hunter, 15 Fed. 715; U. S. v. Babcock, 24 Fed. Cas. 434).

When the carrier in its application designated those data which were considered by the Commission in making its tentative valuation it specified them with all the precision possible in the circumstances. The law does not demand the impossible. That the description was "specific enough to enable the witness to produce them without uncertainty," is indicated by the fact that the Commission, in its order denying inspection of these data, employed almost the same language in which they were designated in the carrier's application.

Mandamus Is the Proper Remedy to Compel the Issuance of the Subpoena.

Duty Ministerial.

As we have heretofore seen, the statute requires the Commission to initiate a proceeding and to afford Relator a hearing therein, at which hearing the Relator is entitled to have produced witnesses and documents whose attendance the Commission is authorized to compel. The duty to issue this process is clearly and patently ministerial and hence mandamus is the proper remedy to enforce that duty.

In the matter of Walter Peterson, 253 U. S. 300, a petition was filed in the Supreme Court praying for writs of prohibition and mandamus, prohibiting the trial court from proceeding under an order appointing

an auditor to make a preliminary statement of an account for the purpose of simplifying the issues and compelling it to restore the case to the trial calendar, upon the ground that such a reference was an invasion of petitioner's right of trial by jury. Respondents objected to the jurisdiction upon the ground that any error in making the reference could be corrected by writ of error from the final judgment. This objection the Court overruled, upon the ground that petitioner was entitled to have his rights enforced "now before the plaintiff is put to the difficulties and the courts to the inconvenience" that would result from such procedure, citing as authority "Ex parte Simons," 247 U. S. 231.

The case of San Francisco Gas Co. v. Superior Court, 155 Calif. 30, is directly in point. In that case, the Supreme Court of California awarded an original writ of mandamus to compel a lower court to issue a commission to take the deposition of a witness in order that such deposition might be used upon a new trial of an action in the event a new trial was granted on an appeal at that time pending in the Supreme Court. After holding that the Relator had the right to take the deposition pending the appeal, the Court said:

> "As to the question of remedy, we think the petitioner is entitled to the writ of mandamus. *That would be the only remedy for the refusal of*

a Commission in a proper case before judgment, and there can be no doubt that it would lie, because it does not rest in the discretion of the trial court or judge to refuse a commission in the cases defined by the code. Conceding that, in cases such as this, the order denying the application for a commission is appealable, that does not seem to be a sufficient reason for holding that remedy exclusive. It would be entirely inadequate in most cases, as it would have been in this, but for the fact that Orchard's sentence has been commuted. And, moreover, the order remanding the cause, if it had been reviewed upon appeal, would be in substance a peremptory mandate."

3. THE SUPREME COURT OF THE DISTRICT OF COLUMBIA HAD JURISDICTION OF THIS CAUSE.

The Commission's Contention.

Ground 4 of the respondent's motion to dismiss was that "the sole purpose of the petition is to obtain * * * an order suspending and setting aside an order made by said Commission * * * over which this Court has no jurisdiction, and over which the District Courts of the United States have exclusive original jurisdiction under the Urgent Deficiency Appropriations Act of October 22, 1913, 38 Stat. L. 219."

The argument underlying this contention runs somewhat as follows:

"This is an action to annul and set aside an order of the Interstate Commerce Commission.

Such a suit prior to the act mentioned could have been brought only in the Commerce Court. All jurisdiction of the Commerce Court has been vested in the District Court. Therefore, this suit could not be brought in the Supreme Court of the District of Columbia, but must be brought in the District Court of the United States."

Not a Suit to Annul an Order.

This is not a suit to set aside or annul an order of the Interstate Commerce Commission. The prayer of the petition asks no such relief. The order of the Commission is pleaded only in order to show that the appellant had applied to the Commission for leave to inspect the records and for the issuance of a subpoena and that the Commission had affirmatively denied this application. Appellant's position is that the order as to the general public continues in force, but that as against it, "it has no legal force and is simply an unauthorized exclusion of it from evidence to which it has the right of access."

The case is exactly the same as that of Ex Parte Uppercu, in 239 U. S. 435, 60 L. Ed. 368, cited at page 29, supra. In that case a District Judge had sealed evidence in a case which had been concluded in his court. A litigant in another case brought an original petition for writ of mandamus in the Supreme Court, seeking access to these records. The respondent contended that the proper remedy of relator in that case was a writ of error from the original

order of the Court sealing the records, and that the writ of mandamus could not be made a substitute for that remedy. Upon this proposition the Court said:

> "The only other question is whether there is any technical difficulty in the way of this Court ordering what, in its opinion, justice requires and what otherwise the petitioner may not be able to obtain. The previous proceedings do not stand in his way. The rejection of his motion on the narrow ground that it was made in the former action and that he was not a party to it did not require to be followed up, and that of the Government, although in his interest by reason of his being particularly concerned in a general act of justice being done, does not confine him to a proceeding in which he is not a master of the cause. The assertion of his rights requires no particular formality. It would have been enough if, on the attention of the Court being called to the matter, it had directed that the order should not be construed as affecting those who otherwise had a right to copies of the papers. It is enough for this Court that it has been intimated with sufficient clearness that the order has a wider scope and is to be applied as against him. As against the petitioner the order has no judicial character, but is simply an unauthorized exclusion of him by virtue of *de facto* power. The proceeding is not for delivery of the papers upon a claim of title, but simply to remove the unauthorized impediment and to correct an act in excess of the jurisdiction of the lower court. We are of opinion that the authority of this Court should be exercised in this case."

The order in question is an ex parte administrative one which does not relate to anyone except the Commission. Neither the appellant nor any other person, outside of the Commission's own employes, is required "to do or abstain from doing any act." The order, therefore, is not reviewable in a direct proceeding to annul or set it aside.

U. S. v. Illinois Central Railroad Co., 244 U. S. 82;
Procter and Gamble v. U. S., 225 U. S. 282.

Jurisdiction of Courts.

The subtlety of appellee's argument, when carried through to its logical conclusion, destroys it. The jurisdiction which the Commerce Court obtained was only "that now possessed by the Circuit Courts of the United States" (Judicial Code 207; Procter and Gamble v. U. S., supra). Therefore (to use appellee's own "logic"), unless the words "Circuit Courts" include the Supreme Court of the District of Columbia, the jurisdiction of that latter court which undoubtedly existed prior to the establishment of the Commerce Court was not vested in the Commerce Court, but has continued in the Supreme Court of the district. If the words "Circuit Courts of the United States" are to be construed as vesting the jurisdiction of the Supreme Court of the district in the Commerce

Court, then the similar provision of the Urgent Deficiency Appropriations Act "District Courts" is sufficiently broad to include the Supreme Court of the District of Columbia when that jurisdiction is reinvested.

A resort to such subtleties, however, is unnecessary. With the possible exception of admiralty, the Supreme Court of the district possesses precisely the same civil jurisdiction as other district courts of the United States, and, in addition, also that possessed by the General Court of the Supreme Court of Chancery of Maryland, February 27, 1801 (D. C. Civ. Code 31, Fed. Practice, Sec. 68).

In several mandamus cases, each embracing orders of the Commission, jurisdiction arising subsequent to the enactment of the Urgent Deficiency Appropriations Act has been upheld by this Court.

Interstate Commerce Commission v. Humboldt, 224 U. S. 474;

Kansas City Southern Ry. Co. v. Interstate Commerce Commission, 252 U. S. 178;

U. S. v. Interstate Commerce Commission, 246 U. S. 638.

CONCLUSION.

If this voluminous brief can be excused at all, it can be done only upon the ground that the rights which Relator seeks to enforce are exceedingly valuable ones to it, in a proceeding before the Commission involving many millions of dollars, in which it has no remedy for the enforcement of this right other than that prayed. As stated at the outset of this brief, the issue herein can be stated within very small compass. It is this: *In a quasi-judicial administrative proceeding involving the disposition of valuable property rights of a citizen, can the administrative board or bureau, which, because of the character of the proceeding, occupies the position of both a party litigant and of the Judge, conceal from such citizen the evidence upon which his property rights are to be determined?* We submit that there can only be one answer to that issue that is consistent with our institutions. Within the past decade there has been a marked development in the United States within this comparatively new field, of administration by bureaus. Executive boards, commissions and bureaus for the ascertainment and determination of rights heretofore determined exclusively by courts have multiplied so rapidly that it seems that they may some day occupy a large part of the field to the exclusion of the courts. Whether

they should do so or not is not a juridical question, but the manner in which they administer the great powers which are confided to them does present such a question. In its last analysis the issue here resembles that settled at Runnymede. It is precisely that which resulted in the act of Parliament abolishing the Court of the Star Chamber. That issue was there: "Is a litigant entitled to an opportunity to know and to test the sufficiency of evidence upon which his rights are to be determined?" Until recently but few of our profession could have been found who would have doubted that it had been settled once and for all in 1641.

Respectfully submitted,

J. R. Turney,
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St. Louis, Missouri, December 24, 1923.

APPENDIX I.

Act To Regulate Commerce.

Provisions of the Interstate Commerce Act relating to the issues herein:

Section 1. (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. * * *

Section 5. (6) It shall be lawful for two or more carriers by railroad, subject to this act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management and operation, under the following conditions:

(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission;

(b) The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this act, and it shall be the duty of the Commission to proceed immediately to

the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation.

Section 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever, pursuant to section 19a of this act, the value of

the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph, the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

Section 17. (As amended March 2, 1889, August 9, 1917, and February 28, 1920.) (1) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission may administer oaths and affirmations and sign subpoenas. A majority of the Commission shall constitute a quorum for the transaction of business, except as may be otherwise herein provided, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division of the Commission, including forms of notices and the services thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division thereof, and be heard in person or by attorney. Every vote and official act of the Commission, or of any division thereof, shall be entered of record, and its proceedings shall be public upon the request of any party interested.

Section 19a. (As amended February 28, 1920.) (a) That the Commission shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of this act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other

assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this act in detail, and show the value thereof, as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way and terminals owned or used for the purposes of a common carrier, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds or other securities; upon the syndicating, banking and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any state, county or municipal government, or by individuals, associations or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any state, county or

municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any state, county or municipal government in consideration of such aid, gift, grant or donation.

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that consitute he ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several states and territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all

agents of the Commission free access to its right of way, its property and its accounts, records and memoranda, whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to co-operate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this act shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Upon the completion of the valuation herein provided for, the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall, from time to time, revise and correct its valuations, showing such revision and correction classified as a whole and separately in each of the several states and territories and the District of Columbia, which valuation, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

(g) To enable the Commission to make such changes and corrections in its valuations of each class of property every common carrier subject to the provisions of this act shall make such reports and fur-

nish such information as the Commission may require.

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney-General of the United States, the Governor of any state in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this act the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be *prima facie* evidence of the value of the property in all proceedings under the Act to Regulate Commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act approved February 4th, eighteen hundred and eighty-seven,

commonly known as "The Act to Regulate Commerce," and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) If, upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the Court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the Court, before proceeding to render judgment, shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the Court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said Court within the time fixed by the Court. If the Commission shall alter, modify or amend its order, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver or trustee to comply with all the requirements of this section and in the manner prescribed by the

Commission such carrier, receiver or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in Section 16 of the Act to Regulate Commerce.

(1) That the district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States, at the request of the Commission, alleging a failure to comply with, or a violation of, any of the provisions of this section by any common carrier, to issue writ or writs of *mandamus* commanding such common carrier to comply with the provisions of this section.

SECTION 12 (Second Paragraph)—"And for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provisions of this section. And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question"; * * *

APPENDIX II.

(a) The Tentative Valuation.

Statements contained in the Tentative Valuation of appellant's property (Exhibit 1 to the Petition) which have a bearing upon this controversy.

Cost of Reproduction New, and Cost of Reproduction Less Depreciation.—The cost of reproduction on new and cost of reproduction less depreciation of all common-carrier property, other than land, owned or used by the carrier, are classified as to ownership and use as follows:

	New	Less Depreciation
Total owned and used..	$28,622,627.00	$21,833,914.00

(Rec., pp. 22 and 23.)

Cost of Lands, Right of way and Terminals at the Time of Their Dedication to Public Use, and Present Value of Same.—The carrier owns and uses for common-carrier purposes 8,724.46 acres of lands (Rec., p. 25).

The area and present value of lands as classified are given in the following tabulation:

Classification	Acres	Present Value
Owned and used.....	8,724.46	$2,179,960.23
Owned but not used:		
Leased to Louisiana Northwest Railway Company..	91.09	8,881.16

(Rec., p. 28.)

Original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value: The present cost of

condemnation and damages or of purchase of lands, owned and used, owned but not used, and used but not owned, by the carrier for common carrier purposes, in excess of the present value of such lands, are found to be as follows:

Total used, entire line.....$1,966,029
Total owned, entire line.....$1,713,252

(Rec., p. 30.)

(b) Statement of Methods.

Statements of the Commission with reference to the evidence considered by it in making tentative valuation of appellant's property as set out in Exhibits 2 and 3 to petition, which are material to the decision of this controversy.

"When the engineering inventory is complete it contains an enumeration of the units of all of the property owned or used by the carrier for common carrier purposes except land. In order to show cost of reproduction it is necessary to apply prices to these units. * * * Ordinarily the cost of a unit divides itself into three parts, (a) the cost f. o. b. some point—usually the point of origin, (b) the cost of transporting, handling, storing, etc., up to the time it is put in place, or in some instance taken out of the material yard for the purpose of being placed in position, and (c) the cost of installation proper."

Expert Testimony Rejected As Unreliable and Cost Data Held Best Evidence.

"Preliminary to any discussion of prices lies the fundamental question how are they to be determined; by what test is the reasonableness of the price to be examined? The carriers contend that the only proper evidence of these prices is the opinion of an expert * * *" (p. 289).

"After careful consideration it was felt by the Commission that it would be unwise and unsafe to depend chiefly upon the opinion of experts; that the only certain foundation upon which to rest was the experience of the past. * * * The attempt is not to determine the exact price of a particular article on that (valuation) date, for that price may have been abnormally high or low, but rather to ascertain what may have been a normal price. For this purpose it was thought that the range of prices over a period of five years previous, and in some cases ten years, should be consulted" (p. 290).

Cost of Materials.

"The Commission, therefore, passed an order, known as Order No. 14, requiring carriers to state the prices paid by them for material and supplies of all kinds entering into the construction and operation of a railroad for five years previous to June 30, 1914, and in some instances for ten years; also the cost of certain kinds of labor * * *" (p. 290).

"This return was verified by the accountants of the Commission, and sometimes accepted without such verification. A compilation was made, showing in general the average price paid by the carriers for the various articles embraced. The result was usually stated in terms f. o. b. the point of shipment, and in this way was obtained the average price paid by the principal carriers of the country for a given article at a given point. This average furnishes the basis of the price applied by the Commission. It is not necessarily the exact price. In addition to prices obtained from carriers, manufacturers have been con-

sulted and statements have been furnished by them showing the prices at which standard goods have been sold to railroads during the same period. Members of the staff of the Commission often personally interviewed such manufacturers with a view to ascertaining pertinent facts (p. 291).

"All this information is passed in review by our engineers, who finally fixed the price to be applied. That price, however, as already suggested, is determined by what carriers have in reality paid, modified in some cases as may seem just * * * (p. 291).

Installation Costs.

"The ascertainment of the cost of installation presents a more difficult problem, but one of the same kind. All labor costs involve elements of uncertainty and variability, which make the ascertainment of such costs less easy, but here again it is felt that while the differences may be greater in individual cases, the general average furnishes a basis upon which the Commsision may rest with confidence * * *" (p. 291).

Findings Based Solely on Cost Data.

"The price so applied is mainly dependent upon past experience, but is not a mere mechanical average. * * * While the price depends upon the cost data and can be relied upon in proportion as it is supported by such cost data, it must be such as commends itself to one qualified to judge" (p. 292).

Overhead Cost Data.

"With reference to the overhead charges, *i. e.*, engineering, general expense and interest during construction, the Commission states: "The attempt has

been made to bring these charges under the same test which has been applied in the development of prices, namely, the actual experience of the past" (p. 295).

Cost of Reproduction Less Depreciation

"As treated by the Commission, depreciation may be defined as the lessening in cost value due to the smaller number of service units in the property as found than in the same property new. An article when new contains, so to speak, a certain number of units of service; as these units are exhausted the article depreciates. When they are all used up, the service life ends. The extent of depreciation is expressed in the condition per cent stated as a fraction of which the denominator expresses the total service units, while the numerator gives those remaining. Thus 80/100 means that of 100 units of service twenty have been exhausted while eighty remain. Ordinarily, this fraction would be obtained by using total life (i. e., years of service) for the denominator and remaining life for the numerator" * * * (p. 281).

Data Relating to Service Life, etc.

"In applying the above principles, it is necessary to determine total life and future life. The date of installation or the beginning of the use is usually known, and if total life can also be fixed, future life may be obtained by subtracting the one from the other" (p. 282).

"Ordinarily, therefore, the problem is to determine total life. This may be done by reference to the experience of the past. * * * In determining total life, observation is of value. The amount of wear which has taken place in a given number of years

can be noted, and from this the total life can be calculated. The opinion of those who are qualified by their training and experience to form an opinion is also of service. From all sources an estimate of total life must be formed and a great amount of study has been devoted to this, mainly in the way of collecting statistics from the experience of the past" (p. 282).

Present Value of Carrier Lands.

"Present value (of carrier lands), as reported by the Commission, is nearly synonymous with market value. What is done is to ascertain the number of acres of carrier lands, to determine the market value of similar land adjoining or in the immediate vicinity, per acre, and to apply that price to the number of acres * * *" (p. 318).

Basic Data Used.

"For the purpose of determining this present value, the Commission sends into the field its land appraisers, who make a personal inspection of the property and ascertain certain facts which bear upon the value. The right of way is first divided into zones, and each zone contains land of substantially similar character and value. Every zone is continuous from one end to the other. The appraiser, having laid out his zone, next proceeds to determine the market value of adjoining and adjacent lands. For this purpose he collects all recent sales which he can find of similar lands in the immediate vicinity. He also ascertains the assessed value of such lands and finally takes the opinion of different classes of well-informed persons as to such value. From a consideration of all of these sources of information he determines the unit or market value" (p. 318).

Cost of Acquiring Carrier Lands.

The Commission, in appendix (a) to the Kansas City Southern Railway Company, made a part of the tentative valuation of relator's property, said: "First, the lands of the carrier are divided into classes known as types * * *" (p. 337).

"Having determined these types, we proceed to find actual classes corresponding to each type. These instances are obtained for the most part from carriers other than the one under consideration * * *" (p. 337).

Multiple Data.

"Having selected these transactions which would fit a particular type, we carefully examine each one of them for the purpose of determining whether it is apparently in all respects normal. If it appears to be abnormal it is rejected. * * * By subtracting the present value from the total amount paid the land owner, we find the excess cost of each case and proceed to determine the ratio between such excess cost and the present value. The result is known as the multiple of that individual case. All multiples of a given kind are now combined into a weighted average, and this average is treated as a multiple of that type * * *" (p. 337).

"When multiples have been determined for all of the types into which the land of a given carrier falls, the process of determining the excess cost consists of combining all parcels of a certain type, determining present value of those parcels in the aggregate, and applying to that present value the multiple determined" (p. 338).

Office Supreme Court, U. S.
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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA, at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Plaintiff in Error,
v.
INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, CHARLES F. STAPLES et al.,
Defendants in Error.
} No. 398.

In Error to the Court of Appeals of the District of Columbia.

MOTION TO ADVANCE.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA, at the Relation of the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error, v. INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, CHARLES F. STAPLES et al., Defendants in Error.	No. 398.

In Error to the Court of Appeals of the District of Columbia.

MOTION TO ADVANCE.

Plaintiff in error moves to advance the above-entitled cause for hearing at the earliest practicable date convenient to the Court.

On June 4, 1923, the Court of Appeals of the District of Columbia, by a divided vote, affirmed the

judgment of the Supreme Court of said district, dismissing a petition for writ of mandamus commanding the Interstate Commerce Commission to permit petitioner to examine certain records and data relating to and used by the Commission in making a valuation of petitioner's railroad properties under the Act of March 1, 1913, commonly known as the "Valuation Act"; and also to issue a subpoena duces tecum for certain-named officers and employes of the Bureau of Valuation of said Commission, commanding them to appear and testify at the hearing to be had before the Commission upon petitioner's protest against the tentative valuation of its property.

Plaintiff in error is advised that several months are likely to elapse before this cause will be reached for argument in ordinary course. The question involved is one of large public importance. The Interstate Commerce Commission is now engaged in the task of valuing the railroad properties of the United States under the provisions of the Valuation Act. Hearings are being held and conclusions reached almost daily under a procedure which denies to petitioner and other railroads in like case the right to examine or inspect the records and data upon which such conclusions are based. If such denial be not in conformity with the requirements of law, obviously the conclusions announced by the Commission in these cases will be subject to attack and much time

and labor will have been lost if such course of procedure shall be permitted to continue indefinitely.

Furthermore, the tentative valuation announced by the Commission for the properties of this petitioner may be and is being used for rate making and the various other purposes for which the Commission is empowered to use it under the Interstate Commerce Act, for all of which reasons it is important that there should be the earliest possible adjudication of petitioner's rights in the premises.

Counsel for the Interstate Commerce Commission concur that an early hearing is desirable, and consent that the case shall be advanced.

Respectfully submitted,

J. R. TURNEY,
CHARLES D. DRAYTON,
Attorneys for Plaintiff in Error.

Office Supreme Court, U. S.
FILED
JAN 12 1924
WM. R. STANSBURY
CLERK

No. 398.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA AT THE RELATION OF THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

v.

INTERSTATE COMMERCE COMMISSION OF THE UNITED STATES, GEORGE B. McGINTY, CHARLES F. STAPLES, ET AL., DEFENDANTS IN ERROR.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

F. J. FARRELL,
For Interstate Commerce Commission.

DECEMBER, 1923.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE UNITED STATES OF AMERICA AT THE relation of the St. Louis Southwestern Railway Company, plaintiff in error,
v.
INTERSTATE COMMERCE COMMISSION OF the United States, George B. McGinty, Charles F. Staples, et al., defendants in error.

No. 398.

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

STATEMENT.

This case is brought here by writ of error to the Court of Appeals of the District of Columbia for the purpose of obtaining a review of the judgment of that court affirming the judgment of the Supreme Court of the District, sustaining a motion to dismiss filed on behalf of defendants in error and dismissing the petition of plaintiff in error.

On October 9, 1922, the Interstate Commerce Commission, one of the above-named defendants in error, hereinafter called the Commission, made and entered an order applicable generally to all common carriers subject to the interstate commerce act. The order is in words and figures as follows, namely:

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of October, A. D. 1922.

In the matter of the request of carriers for permission to inspect records and data of the Bureau of Valuation.

Whereas the Commission has before it the request of certain carriers to be permitted to examine and make copies, written and photographic, of the original field notes, cost data, copies of contracts, records of construction costs, opinions, sales, assessments and other data, reports, records, and compilations of the land, accounting and engineering sections of the Bureau of Valuation, and the Commission having considered fully the representations of the carriers relative thereto, the brief submitted in support thereof, the character of the records and data in question, and the necessities of the Commission's valuation work;

It appearing that the opening of certain records and data of the Bureau of Valuation to inspection and examination by other than employees of the Commission unless and until they shall have been offered in evidence in hearings before the Commission upon protests against the tentative valuations of carriers' properties, or before a court of competent jurisdiction, would be detrimental to the public interest; would make it impossible for the Commission to secure as reliable and uninfluenced opinions as to land values and price and cost information as it can otherwise secure; would unnecessarily prolong the work and

greatly increase the expense thereof; and would seriously interfere with due performance of the regular duties of the Commission's employees;

It is ordered that, until the further order of the Commission, office or field notations and memoranda in the Bureau of Valuation, and opinions or correspondence from or to any branch or employee thereof; land field notes; land computation sheets; cost information secured from manufacturers, dealers, contractors, private parties, or carriers other than the carriers making the application for permission to inspect; cost studies and cost analyses prepared by the employees of the Bureau of Valuation, shall not be open for inspection by other than employees of the Commission unless and until offered in evidence either in a valuation hearing under the provisions of section 19a of the interstate commerce act or in a court of competent jurisdiction.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

(Rec. 7–8.)

Among the requests of carriers mentioned in its order by the Commission was a motion filed by plaintiff in error in connection with the Commission's tentative valuations of properties included in plaintiff in error's railroad system, from which we quote as follows:

The tentative valuations served herein are based upon certain underlying data now in the

possession of the Bureau of Valuation, to wit, the original field notes, cost data, copies of contracts, records of construction costs, opinions, sales, assessments and other data, reports, records and compilations of the land, accounting and engineering sections, which data petitioners have been denied the right to examine.

Petitioners are informed, verily believe and charge that said data is material to the issues herein and constitutes evidence in support of their protests filed herein, and that an inspection and examination of the same will enable them to show at the trial that the aforesaid tentative valuations are wholly erroneous and without basis in law or in fact, and that the said tentative valuations should be set aside and held for naught. (Rec. 340.)

Wherefore, petitioners jointly and severally pray:

(1) That the Commission make and enter an order permitting the carriers to examine all aforesaid data, reports, compilations and records of the Bureau of Valuation upon which said tentative valuations are based or which in any way relate thereto, and to afford them reasonable opportunity to make copies, written or photographic, of the same;

(2) That the Commission issue a subpœna duces tecum to the following named officers and employees of the Bureau of Valuation, commanding them to appear and give testimony at the hearing to be held at Washington, D. C., on September 26, 1922, as aforesaid, bringing with them all of the above described data, reports, compilations, records and mem-

oranda, and all other data and compilations, records and memoranda, and all other data and compilations in any way relating to the matters in issue, to wit:

C. F. Staples, P. J. Farrell, C. W. Needham, F. H. Jones, T. P. Artaud, Andrew Wiley, and such other subordinates as have personal knowledge of the data above described. (Rec. 341.)

Thereafter, on October 25, 1922, plaintiff in error filed in the Supreme Court of the District of Columbia the petition herein, the prayer of which reads as follows:

Relator therefore prays that your honor grant an order for the issuance of a peremptory writ of mandamus, commanding and directing the respondents to forthwith permit relator and its lawfully authorized agents to examine the aforesaid underlying data, contracts, reports, compilations, and records of the Bureau of Valuation upon which said valuations of relator's property are based or which are in any way related thereto at all reasonable times and under reasonable restrictions and safeguards to afford relator and its authorized agents and employees reasonable opportunity to make copies, written and photographic, of the same, and directing the respondent, Interstate Commerce Commission, further to issue a subpœna duces tecum to the following-named officers, employees of the Bureau of Valuation of the Interstate Commerce Commission, commanding them to appear and give testimony at hearing to be had upon relator's protest against the

tentative valuation of its property at Washington, D. C., as aforesaid, bringing with them all of the above described underlying data, reports, compilations, records, and memoranda, and all other data and compilations in any way relating to the matters in issue in said proceeding, to wit, Howard M. Jones, Theodore P. Artaud, Andrew Wiley, [James M. Willey, Jr.], Charles F. Staples, and Charles W. Needham, or if the court be not minded to issue its peremptory writ, then for an alternative writ commanding respondents to appear before the court on some day to be named in said writ and show cause, if any there be, why a peremptory writ of mandamus should not issue requiring the respondents to perform said acts, and for such other and further order and relief as it may be entitled to in the premises. This is the first application for writ of mandamus in this cause. (Rec. 10.)

In the motion to dismiss, filed on behalf of the Commission and the other defendants in error, reasons advanced in support of the motion were and are as follows:

1. The petition does not contain statements or allegations of fact which entitle the relator to the relief or any of the relief prayed for by it in and by said petition.

2. The petition does not contain statements or allegations of fact which show or tend to show either that the respondents have or that any of them has done any act in conflict with or in violation of any legal right or any other right of the relator, or that respondents have

or that any of them has failed or refused to perform any duty imposed by law.

3. The petition does not contain statements or allegations of fact which show or tend to show that the respondent Interstate Commerce Commission has refused to issue subpœnas requiring said other respondents to appear at a hearing before said Commission and testify concerning the valuation of the property of relator referred to in said petition.

4. The statements and allegations of fact contained in the petition show conclusively that the sole purpose of the petition is to obtain from this court an order suspending and setting aside an order made by said Commission under the authority conferred upon it by the interstate commerce act, particularly section 19a thereof, over which this court has no jurisdiction and over which the District Courts of the United States have exclusive original jurisdiction, under the urgent deficiencies appropriations act of October 22, 1913, 38 Stat. L., 219–220.

5. The motion referred to as Exhibit 4 in the petition is entirely general in character, and in said motion no particular record or particular datum is mentioned, specified, or designated. (Rec. 342–343.)

In affirming the judgment of the Supreme Court of the District, sustaining the motion to dismiss and dismissing the petition, the Court of Appeals, speaking by Mr. Chief Justice Smyth, among other things, said:

> Up to the time the tentative value is arrived at the Commission acts as appraiser merely.

It is free to gather its information from whatever source it pleases, and the carrier has no right to know the source or to question the persons from whom the information has been procured. (Rec. 351.)

While the relator charges that the chief counsel for the Commission stated that the relator would not be allowed to introduce the data referred to or interrogate the employees of the Commission who gathered the data, we think the formal order of the Commission is the best evidence of its attitude touching the matter. The order says that the data would not be open for inspection except to employees of the Commission "unless and until offered in evidence either in a valuation hearing under the provisions of section 19a of the interstate commerce act or in a court of competent jurisdiction." This clearly means that the data and other matters covered by the order may be offered in evidence on the hearing before the Commission, and hence that the relator is not denied the right to offer it if it thinks proper to do so. The subpœna duces tecum to require the employees of the Commission to produce the records is entirely unnecessary. Those employees are subject to the direction of the Commission, and in a proper case they will be undoubtedly produced, with records pertinent to the issues to be tried, at the request of anybody entitled to have them testify.

But there is another reason why the writ should not issue. Section 19a says, "Unless otherwise ordered by the Commission, with

the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public." Exercising the authority granted it by this provision the Commission has made the order sealing the data. It is argued that while this provision authorizes the Commission to close the data to the general public, it does not authorize it to prohibit a carrier interested from having access to it. Whether or not this construction, urged by the relator, is correct is immaterial. The provision is certainly open to the interpretation placed upon it by the Commission. The latter may have erred, but we can not, upon an application for a writ of mandamus, review its action for the purpose of determining whether or not it did err. (Rec. 352–353.)

This case is not like *Ex parte Uppercu*, 239 U. S. 435, where the court, exercising what it supposed to be its common law power, entered an order forbidding a party access to certain depositions and exhibits which had been filed in the case. There was no statute in that case expressly conferring upon the court the power to make such an order.

The relator in its brief covers a wide field, and invites us to consider many things which we do not think should be given attention, because, as we view it, the decisions of the Supreme Court of the United States referred to, and many others which might be cited, as well as decisions of this court, make it very clear that we can not control by mandamus

the discretion vested in the Commission by Congress.

The judgment of the lower court is affirmed, with costs. (Rec. 353.)

Plaintiff in error's assignments of error are 11 in number, and appear to us to be covered by the points included in the subject index of this brief.

ARGUMENT.

I.

PLAINTIFF IN ERROR IS ASKING THE COURT TO EXERCISE JURISDICTION IN CONNECTION WITH A SUBJECT MATTER OVER WHICH THE DISTRICT COURTS OF THE UNITED STATES HAVE EXCLUSIVE ORIGINAL JURISDICTION.

Aside from the prayer thereof, the petition herein consists of 25 paragraphs, which may be summarized as follows: In paragraphs 1 and 2 the parties to this proceeding are described. Paragraphs 3 to 20, inclusive, relate to a tentative valuation of the property of plaintiff in error and appendices referred to therein, a protest against said tentative valuation filed in the office of the Commission by plaintiff in error, a hearing on said protest assigned by the Commission and afterwards canceled, the Commission's said order of October 9, and a motion relating to the records and data covered by said order, which was filed in the office of the Commission by plaintiff in error on July 20, 1922. Paragraphs 21 to 25, inclusive, contain statements and allegations which are apparently made for the purpose of supporting plaintiff in error's conclusion, included in paragraph 21, that the order of October 9 is unlawful and void.

It is therefore clear, we submit, that the real purpose of this proceeding is to secure action by the court which will result in annulling and setting aside the Commission's order of October 9, which was made by the Commission in accordance with authority conferred upon it by the interstate commerce act, particularly section 19a thereof, paragraph (e) of which reads as follows:

> Every common carrier subject to the provisions of this act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section 20 of this act shall have the full force and effect of law. *Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.* [Italics ours.]

In the act of June 18, 1910, entitled "An act to create a commerce court and to amend the act entitled 'An act to regulate commerce,' approved February 4, 1887, as heretofore amended, and for other purposes," it was, among other things, provided—

> That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:
>
> First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.
>
> Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.
>
> The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive: but this act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes. (36 Stat. L. 539–540.)

The jurisdiction thus conferred upon and made exclusive in the Commerce Court was transferred to the district courts of the United States by the urgent deficiencies appropriations act of October 22, 1913, from which we quote as follows:

> The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment.
>
> The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this act shall be the same as that heretofore prevailing in the Commerce Court. * * *. (38 Stat. L. 219–220.)

The jurisdictional question here presented was not passed upon directly by the Court of Appeals, but, concerning the Commission's construction of the portion of paragraph (e) of section 19a which we have italicized, that court, as above shown, said:

> * * * It is argued that while this provision authorizes the Commission to close the data to the general public, it does not au-

> thorize it to prohibit a carrier interested from having access to it. Whether or not this construction, urged by the relator, is correct is immaterial. The provision is certainly open to the interpretation placed upon it by the Commission. The latter may have erred, but we can not, upon an application for a writ of mandamus, review its action for the purpose of determining whether or not it did err. (Rec. 352–353.)

II.

THE PETITION DOES NOT CONTAIN STATEMENTS OR ALLEGATIONS OF FACT WHICH SHOW OR TEND TO SHOW EITHER THAT THE DEFENDANTS IN ERROR HAVE OR THAT ANY OF THEM HAS DONE ANY ACT IN CONFLICT WITH OR IN VIOLATION OF ANY LEGAL RIGHT OR ANY OTHER RIGHT OF THE PLAINTIFF IN ERROR, OR THAT THE DEFENDANTS IN ERROR HAVE OR THAT ANY OF THEM HAS FAILED OR REFUSED TO PERFORM ANY DUTY IMPOSED BY LAW.

We have shown that the order of October 9 was made by the Commission under authority conferred upon it by the interstate commerce act and that the validity of that order can not be questioned in this proceeding, and it is difficult for us to understand the theory upon which the defendants in error other than the Commission were made parties to the proceeding. Aside from the prayer thereof, said other defendants in error are mentioned only in the second and fifteenth paragraphs of the petition, which read:

> That respondent, Interstate Commerce Commission, is the commission created by the act last mentioned and charged with certain duties therein imposed; respondent George B. McGinty is secretary of said commission, and

respondents, Charles F. Staples, Charles W. Needham, Howard M. Jones, and Theodore P. Artaud, are citizens and residents of the District of Columbia, and are the acting director, the solicitor, the supervising engineer, and supervisor of land appraisals, respectively, of the bureau of valuation, a bureau made and constituted by the respondent, Interstate Commerce Commission, charged with the performance of the duties imposed upon said commission by said section 19a of said act, and have under their immediate control certain records, documents, and data hereinafter described. (Rec. 2–3.)

That respondents, Howard M. Jones, Theodore P. Artaud, Andrew Wiley [James M. Willey, jr.], Charles T. [F.] Staples, and Charles W. Needham, are witnesses residing and living in the city of Washington, within the jurisdiction of said commission and this court, whose testimony is relevant and material to relator's protest and who have in their possession the aforesaid underlying data, which data is relevant and material evidence in behalf of relator's protest. (Rec. 7.)

Plaintiff in error alleges that said other defendants in error "have under their immediate control certain records, documents, and data," described in the petition, but plaintiff in error also alleges that, in so far as they are connected with said records, documents, and data, said other defendants in error are acting as employees and operating under the control of the Commission. It is there-

fore apparent, we submit, that the petition does not contain statements or allegations of fact which show or tend to show that any of said other defendants in error has done any act in conflict with or in violation of any legal right or any other right of the plaintiff in error, or that any of said other defendants in error has failed or refused to perform any duty imposed by law.

III.

THE PETITION DOES NOT CONTAIN STATEMENTS OR ALLEGATIONS OF FACT WHICH SHOW OR TEND TO SHOW THAT THE COMMISSION HAS REFUSED TO ISSUE SUBPŒNAS REQUIRING THE OTHER DEFENDANTS IN ERROR TO APPEAR AT A HEARING BEFORE THE COMMISSION AND TESTIFY CONCERNING THE VALUATION OF THE PROPERTY OF PLAINTIFF IN ERROR REFERRED TO IN THE PETITION.

We think the quotations from the petition inserted under the last preceding heading show clearly that plaintiff in error does not wish to have the Commission issue any subpœnas except subpœnas duces tecum; that is to say, subpœnas which will require said other defendants in error to present at a hearing to be held before the Commission on the aforesaid protest of plaintiff in error the records and data covered by the Commission's said order of October 9, 1922. It is probably not necessary therefore to make any argument in this connection. However, in paragraph 14 of its petition, plaintiff in error alleges that, when it so demands, the Commission is required by law "to subpœna witnesses to attend said hearing, with such documents as may be specified." The full text of said paragraph 14 is—

> That under the act of Congress respondent, Interstate Commerce Commission, is required to fix a time for hearing its protest filed against the aforesaid tentative valuation, and to hear and consider any matter relative and material thereto which may be presented in support of said protest, and that it is also required under said act to subpœna witnesses to attend said hearing, with such documents as may be specified, when demand is made therefor by relator. (Rec. 6–7.)

We have already called the court's attention to the language contained in paragraph (e) of section 19a of the interstate commerce act, and in paragraph (c) of said section it is, among other things, provided that—

> Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, * * *.

Also, in paragraph (1) of section 17 of said act it is, among other things, provided:

> That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission may administer oaths and affirmations and sign subpœnas.

We respectfully submit that the provisions of law to which we have called the court's attention clearly show that the Congress intended to leave the Com-

mission entirely free to exercise its own judgmer and discretion in connection with the issuance subpœnas duces tecum and also in connection wit the issuance of other subpœnas, and that it woul not be proper for this court, by ordering the issuan of a writ of mandamus, to interfere in any way wit the free exercise of such judgment and discretio Upon this point we call attention to a decision of th court, in *Interstate Commerce Commission* v. *Unite States ex rel. Members of the Waste Merchants' Ass ciation of New York*, 260 U. S. 32, wherein it was hel that—

> * * * Mandamus can not be had t compel a particular exercise of judgment discretion * * *, or be used as a writ error * * *. (Id. 34.)

It will be observed that the Commission has neve declined to issue the subpœnas duces tecum referre to in the petition of plaintiff in error, but we think is apparent that such action on the part of the Com mission will never become necessary. As stated b plaintiff in error in paragraph 2 of its petition, an hereinbefore shown, the individuals to whom plainti in error requested the Commission to address th subpœnas are employees of the Commission, an under these circumstances it is obvious, we submi that simply upon instructions from the Commissio to do so such employees will appear at any hearin upon the protest filed by plaintiff in error as afor said and give testimony pertaining to matters covere by the protest, if called upon by plaintiff in error fo

that purpose. Pertinent language of the Court of Appeals in this connection was and is:

> * * * The subpœna duces tecum to require the employees of the Commission to produce the records is entirely unnecessary. Those employees are subject to the direction of the Commission, and in a proper case they will be undoubtedly produced, with records pertinent to the issues to be tried, at the request of anybody entitled to have them testify. (Rec. 352.)

IV.

THE MOTION REFERRED TO IN THE PETITION AS EXHIBIT 4 IS ENTIRELY GENERAL IN CHARACTER, AND IN SAID MOTION NO PARTICULAR RECORD OR PARTICULAR DATUM IS MENTIONED, SPECIFIED, OR DESIGNATED.

Plaintiff in error's description of the records and data it asked the Commission to permit it to inspect, etc., and the reasons advanced by plaintiff in error in support of its application, are shown by two paragraphs of said motion, which read:

> The tentative valuations served herein are based upon certain underlying data now in the possession of the Bureau of Valuation, to wit, the original field notes, cost data, copies of contracts, records of construction costs, opinions, sales, assessments and other data, reports, records and compilations of the land, accounting and engineering sections, which data petitioners have been denied the right to examine.
>
> Petitioners are informed, verily believe, and charge that said data is material to the issues

> herein and constitutes evidence in support of their protests filed herein, and that an inspection and examination of the same will enable them to show at the trial that the aforesaid tentative valuations are wholly erroneous and without basis in law or in fact, and that the said tentative valuations should be set aside and held for naught. (Rec. 340.)

Even if there had been no other reason for doing so, we think the refusal of the Commission to act favorably upon plaintiff in error's said motion would have been justified by the indefiniteness and uncertainty shown by the language of the motion above quoted. We are unable to see anything more or less in the motion than an attempt to secure what may properly be called a search warrant which would enable plaintiff in error to enter upon a fishing expedition in the Commission's Bureau of Valuation for the purpose of ascertaining whether there is anything in the working papers of the Commission's employees which, in the opinion of plaintiff in error, can profitably be used by it in any hearing before the Commission which may hereafter be held upon the aforesaid protest of plaintiff in error. It goes without saying that representatives of the plaintiff in error and employees of the Commission could not at the same time use the records and data mentioned, and this, we submit, clearly demonstrates the correctness of reasons for denying the motion set forth in the Commission's order of October 9. The Commission there said, among

other things, that to grant the motion would unnecessarily prolong the work [of valuation]; greatly increase the expense thereof, and greatly interfere with due performance of the regular duties of the Commission's employees.

In *Jenkins* v. *Bennett et al.*, 18 S. E. Rep. 929, the lower court had acted favorably upon a motion for permission to inspect and copy certain papers, and in reversing this action the Supreme Court of South Carolina said:

> * * * We think it clear that before this somewhat extraordinary power should be exercised, the moving party should show, at least prima facie, such fact or facts as would enable the court to exercise its discretion as to whether such a power as is invoked should be exercised. Now, in this case, no facts of any kind are stated in the affidavit upon which the motion was based. The bald statement that the papers desired to be inspected "contain evidence relating to the merits of the action" is nothing more than an expression of the plaintiff's opinion, and can not be regarded as the statement of any fact * * *. It seems to us that the order was erroneously granted, and should therefore be reversed; not because the circuit judge erred in the exercise of his discretion, but because the moving papers showed no facts upon which his discretion could be exercised. (Id. 931–932.)

In his concurring opinion in this case in the Court of Appeals, Mr. Justice Smith said:

> * * * If there be in the possession of the Commission any record or paper which the carrier desires to offer in evidence on the hearing of the protest it is the duty of the Commission, it seems to me, to produce such record or paper on proper demand therefor in order that mistakes in the tentative valuation, if any there be, may be corrected before it becomes final. * * *. (Rec. 354.)
>
> Inasmuch as it does not appear however from the record in the case that any demand was made on the Commission to produce at the hearing any specified paper or record, or that the production of any such paper or record at the hearing was refused by the Commission or that a subpœna duces tecum for the production of specific papers or records was denied, I concur in the conclusion reached by the Chief Justice. (Rec. 355.)

Upon oral argument in the Court of Appeals, counsel for plaintiff in error attempted to justify the general terms used in the motion under consideration by stating that the Commission used like terms in its order of October 9, but in this connection they apparently overlooked the fact that the motion was filed in the Commission's office before the order was made, and that for this reason it was necessary for the Commission to use in its order the same terms which had been included in the motion.

At the time the Commission made the order it was confronted with the necessity of determining whether

it should preserve for the use of its employees, in preparing reports in valuation cases, data, etc., which had previously been collected in different parts of the United States for use in that connection, or whether it should interrupt that work for the purpose of affording to plaintiff in error and other carriers an opportunity for such inspection, copying, photographing, etc., as they might see fit to indulge in. After a careful consideration and by the exercise of judgment and discretion the Commission reached the conclusion that, under the circumstances, such an interruption would not be justifiable and made the order, wherein it set forth the reasons upon which the conclusion is based.

The theory of counsel for the plaintiff in error appears to be that the Commission can not perform properly the appraisal duties imposed upon it by section 19a of the interstate commerce act, unless, upon demand, it exhibits to plaintiff in error for criticism all information the Commission may obtain concerning costs and values, in the investigation the Commission is required by said section to make. This view, however, fails to make any allowance for the important difference which exists between the duties the members of the Commission perform as appraisers under said section 19a and the duties they perform in determining disputed questions of fact in rate and other similar cases.

A contention like the one counsel for the plaintiff in error are now making was made in *Omaha* v. *Omaha Water Company*, 218 U. S. 180, and in stating the

contention and ruling it to be unsound, this court said:

> The next objection is that the appraisers heard evidence in the absence of the city and without opportunity to reply, and that this was such misconduct as to vitiate the valuation. As already hinted, this was not a board of arbitrators. An arbitration implies a difference, a dispute, and involves ordinarily a hearing and all thereby implied * * *. (Id. 193–194.)
>
> In the present case there was not only no antecedent disagreement as to price, but the ordinance under which the purchase was to be made provided that the property was to pass "at an appraised valuation, which shall be ascertained by the estimate of three engineers," * * *. (Id. 196.)
>
> That the great bulk of the evidence was heard or submitted in the presence of counsel representing both sides is true. This course did not, however, preclude them from enlightening their judgment as experts by either personal inspection or by informing themselves in any other way of the value of the plant in question without calling in counsel if they desired further information. (Id. 197.)

Pertinent language contained in the aforesaid opinion of Mr. Chief Justice Smyth is as follows:

> Up to the time the tentative value is arrived at the Commission acts as appraiser merely. It is free to gather its information from whatever source it pleases, and the carrier has no right to know the source or to question the

persons from whom the information has been procured. In the case of Omaha *v.* Omaha Water Co., 218 U. S. 180, 197, the court passed upon the right of the city of Omaha, through its counsel, to examine the books submitted by the Water Co. to appraisers named to fix the value of the company's plant. After pointing out the distinction between valuers and arbitrators, it stated that much of the evidence bearing upon the subject was submitted in the presence of counsel representing both sides, and was, of course, subject to the examination and cross-examination of the parties. "This course," said the court, "did not, however, preclude them (the appraisers) from enlightening their judgment as experts by either personal inspection or by informing themselves in any other way of the value of the plant in question without calling in counsel if they desired further information." Near the close of the taking of testimony the appraisers, according to the court's opinion, called upon the company for its books, and had the books gone over by an auditor of their own selection. Counsel for the city learning of the call asked for an opportunity to be present when the books were submitted. The opportunity was denied and the city assigned this as error. In passing upon the matter the court said: "We have only the lone fact that the appraisers of their own motion asked an opportunity to look over and have audited the company's books and that the company granted the privilege as 'confidential information' for the

> use of the appraisers only," and held that counsel for the city was not entitled to be present when the books were submitted and that there was no error in refusing to disclose the confidential information. If in that case the appraisers were entitled to treat the information which they derived from the Water Company, a private enterprise, as confidential and to refuse to reveal it to those representing the city, a fortiori the Interstate Commerce Commission, acting for the public, should have the same right with respect to the information which it has procured and which the relator demands the right to inspect. Counsel have attempted to distinguish this case from the one at bar, but we think they have failed. (Rec. 351–352.)

If the Commission, in fixing the final values of the properties of common carriers under the authority conferred and in accordance with the duties imposed upon it by said section 19a, commits errors of law, those errors can later be corrected in suits instituted in district courts of the United States, but they can not be corrected, either before or after the final values are so fixed, in mandamus proceedings instituted either in the Supreme Court of the District of Columbia or in any other court, because, as hereinbefore shown, "mandamus can not be had to compel a particular exercise of judgment or discretion, or be used as a writ of error."

In their brief, counsel for plaintiff in error say: "This is not a suit to set aside or annul an order of the Interstate Commerce Commission. The prayer of

the petition asks no such relief." It is obvious, however, that if the court should grant the relief prayed for by appellant it would thereby set the order aside and render it ineffective.

It is further apparent that if the court should require the Commission to turn over to plaintiff in error for inspection, copying, photographing, etc., the original field notes, cost data, copies of contracts, records of construction costs, opinions, sales, assessments, and other data, which the Commission has collected in all parts of the United States in the performance of its duties under the valuation act, the forces of the Commission would, as a practical matter, be obliged to discontinue their present work of preparing engineering, accounting, and land reports pertaining to the valuation of properties of common carriers located in different parts of the country until after plaintiff in error has completed the work of inspecting, copying, and photographing, above mentioned. Even then, however, the Commission's employees might not have an opportunity to resume their work of making reports, because, by the time plaintiff in error has completed its search for information in the Commission's Bureau of Valuation, some other carrier or carriers may wish to make a like search.

Instead of introducing its own evidence, as contemplated by paragraph (i) of the valuation act, in support of its protest against items contained in the tentative valuation report served upon it by the Commission, the details of which have been included

in the underlying engineering, accounting, and land reports which have also been delivered to it, plaintiff in error insists upon being given an opportunity to show that the experts who did the work upon which the report is based were incompetent; that even if they were not, the means they employed to inform themselves in the premises were not completely satisfactory to plaintiff in error and do not now have its entire approval, and that as a consequence the report is null and void and should not be given any legal effect.

It is plain, we submit, that plaintiff in error is endeavoring to induce the court to assume and exercise jurisdiction over matters which are within the jurisdiction of the Commission and in connection with which the Commission has exercised its judgment and discretion in accordance with authority duly conferred upon it by the Congress. In other words, appellant is asking the court to order the issuance of a writ of mandamus to compel a particular exercise of judgment and discretion on the part of the Commission, but this, as above shown, the court could not properly do.

If, after plaintiff in error has introduced evidence in support of its protest in a hearing before the Commission, evidence of a contrary import is introduced at the hearing, plaintiff in error will then have a right to test the accuracy, competency and relevancy of the latter evidence, but, in advance of the introduction by it of its own evidence, it may not properly insist upon being given an opportunity to examine

all matters in the Commission's Bureau of Valuation for the purpose of ascertaining whether, in its opinion, such evidence of contrary import is therein contained. And what is said here about the introduction of evidence before the Commission will be equally applicable to the introduction of evidence in court if plaintiff in error challenges in court the validity of action the Commission may finally take in determining the value of plaintiff in error's property.

For the reasons above set forth we insist that the appeal in this case should be dismissed.

Respectfully submitted.

P. J. FARRELL,
For Interstate Commerce Commission.

DECEMBER, 1923.

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UNITED STATES AT THE RELATION OF ST. LOUIS SOUTHWESTERN RAILWAY COMPANY *v.* INTERSTATE COMMERCE COMMISSION ET AL.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 398. Argued January 23, 24, 1924.—Decided February 18, 1924.

1. Congress may make one fact *prima facie* evidence of another if the inference is not so unreasonable as to be a purely arbitrary mandate. P. 77.
2. Under § 19a of the Act to Regulate Commerce, as amended, directing the Commission to investigate, ascertain and report the value of the properties of common carriers, and to hear the protests of any carrier against a valuation tentatively made; declaring a final valuation *prima facie* evidence of the value of the carrier's property in all proceedings under the act and in various judicial proceedings, and providing that, unless otherwise ordered by the Commission, its records and data shall be open to the inspection and examination of the public. *Held:*

(*a*) That an order of the Commission denying inspection of records by others than its employees, unless and until offered in evidence at hearings upon protests or before a court, was valid against an interested carrier in so far as the claim to examine them might be based upon the naked ground of their being public documents. P. 78.

(*b*) Subject to the right of the Commission to prevent undue interference with the work in its offices, and undue protraction of hearings, manifest justice requires that the carrier be enabled to examine and meet the data upon which preliminary valuation of its property is founded, and, to this end, be given such information in advance of the hearing as will enable it to point out errors. *Id.*

(*c*) This claim of the carrier should not be denied upon the ground of public policy, nor upon the ground that the evidence was given the Commission in confidence. *Id.*

(*d*) The carrier is not entitled to subpoenas from the Commission not presently needed. P. 79.

290 Fed. 264, affirmed.

ERROR to a judgment of the Court of Appeals of the District of Columbia, affirming a judgment of the Supreme Court of the District, which dismissed a petition for a mandamus against the Interstate Commerce Commission and some of its officials.

Mr. J. R. Turney, with whom *Mr. C. D. Drayton* was on the brief, for plaintiff in error.

The Valuation Act did not empower the Commission to abrogate relator's right, as a party litigant, to examine records and data in the possession of the Commission containing evidence material to the prosecution of relator's protest.

The value reported in the tentative valuation is a mathematical calculation based upon three subordinate findings, (1) the so-called cost of reproducing the physical property, (2) the amount of depreciation in the physical property, and (3) the present value of relator's lands. The reproduction cost is based entirely upon certain average unit prices obtained from statistical data gathered and compiled by the employees of the bureau. The amount of depreciation deducted was determined primarily by the service life of the several physical units also shown by the averages of data similarly gathered and compiled by the Commission's employees. The present value of the lands of relator was determined by the assessment for tax purposes of certain other property in the vicinity, by the sales of like property in the vicinity and by the opinion of certain unnamed persons as to the value of lands lying in the vicinity of relator's lands.

Assuming, but not conceding, that this is the correct method of valuing railroad property, the burden cast upon a protestant can be sustained only by showing that these underlying data are incorrect in one or more of the following particulars: (1) because the facts contained in the data are untrue; (2) because the projects from

which the statistical data were compiled were unfairly selected or were inapplicable to the case in which the average is to be used; (3) because other and material relevant data which would have affected the result materially were either not considered or were excluded in making the compilation; and finally, (4) because the actual analyses and compilations of the data were incorrect mathematically, in theory, application or arithmetic.

The Commission states that the statistical data above described were gathered from nation-wide sources, embracing, not only all carriers, but innumerable manufacturers, etc. In order to make the foregoing tests of the accuracy and applicability of the facts stated in these data, it will be necessary to investigate the original records from these many sources. To ascertain whether the statistical data are complete it will be necessary to compare and analyze the compilations used by the Commission with the results of similar studies of other data made by the protestant. To test the experiential qualifications of the men upon whose opinion various facts are based, it will be necessary to investigate the education, mental habit, the environment and objective point of the person giving the facts, the motive prompting his opinion or his selection, as well as the extent of his information. With respect to the sales of land used as a basis for fixing the land values, it will be necessary to investigate whether or not the property sold was comparable with that of the property of the railroad; whether the sale was voluntary or made under duress or coercion; whether the consideration shown was in fact actually paid; whether the area reported was the correct area, and finally, what effect the inclusion of other sales omitted by the Commission would have had on the unit price. When these facts have been investigated, it will then be necessary to recompile and analyze the data to determine whether or not the analysis used by the Bureau's employees was correct mathematically.

There is a fundamental difference between the evidence to which access is sought in this case and that which ordinarily forms a predicate of judicial action. The time required to make such examination and analysis means that unless the relator has the opportunity to examine the data in advance of the hearing, its right to contest the tentative valuation will be denied for all practical purposes.

The data sought consist of statistics and records gathered from a large number of different sources by means of questionnaires, circulars and personal interviews purporting to show the cost and values of railroad property. They were gathered, compiled and analyzed by officers of the Government at public expense in performance of a statutory duty and are now preserved in the Commission's files as a permanent memorial of how that duty was performed. They are, therefore, public records, which a litigant has a right to examine. *People* v. *Peck*, 138 N. Y. 386; *Coleman* v. *Commonwealth*, 25 Gratt. 865; *Robinson* v. *Fiskback*, 135 Ind. 132.

Under paragraph (j) of the valuation section the final value fixed by the Commission is made *prima facie* evidence of the value in all judicial proceedings, in which the data would be material evidence on behalf of the relator and to impeach this *prima facie* showing. It is not necessary in order for the right to examine a public record to arise, that the litigation be pending. The right exists if the data contain evidence material to the prosecution of a claim or a defense in a case which may arise. *Citronelle* v. *Skinner*, 60 Ala. 812; *Ferry* v. *Williams*, 41 N. J. L. 332; *Ex parte Uppercu*, 239 U. S. 435.

The discretion which the statute (par. e) gives the Commission to seal its records is limited to the general public, and does not refer to litigants or other persons who have the right of access to the evidence independent of the statute. See *Palacios* v. *Corbett*, 172 S. W. 777; *Wellford* v. *Williams*, 110 Tenn. 549; *Colescot* v. *King*, 154 Ind. 621.

The Commission's construction of the statute does not foreclose judicial action. *Work* v. *McAlester-Edwards Co.*, 262 U. S. 200; *Roberts* v. *United States*, 176 U. S. 221; *Lane* v. *Hoglund*, 244 U. S. 174.

Denial of the right was in any event outside the discretion of the Commission, and arbitrary and void.

The statement that opening the records would be detrimental to the public interest, conveys no reason.

The statement that disclosure would make it impossible to secure reliable and uninfluenced opinions, means that justice will more likely be done in a proceeding *in camera* than it will in one in which the parties can hear and be heard. See *Jackson* v. *Mobley*, 157 Ala. 108; *Re Egan*, 205 N. Y. 147.

That it would prolong the work, increase the expense and interfere with performance of duties of the Commission's employees, are reasons upon their face without legal force. The statute declares that the records shall be open to the public, except for good cause shown. The Commission has no more right to decline to perform a duty placed upon it by Congress, because the performance of the duty will require time and expense, than it has to decline to perform it upon the ground that it is impossible of performance, or that it would be futile to do so. *Kansas City Southern Ry. Co.* v. *Interstate Commerce Comm.*, 252 U. S. 178.

The reasons which Congress had in mind that would warrant the sealing of the records were those which would apply to some particular case or some particular record, but not these which would apply to the opening of all records in all cases.

Since the statute relied upon by the defendants requires that the records shall be public, in the absence of an order based upon lawful reasons, an order sealing the records which does not meet this requirement is utterly null and void.

Mandamus is the proper remedy. *Ex parte Bradley*, 7 Wall. 364; *Mauldin* v. *Matthews*, 81 S. Car. 414; *Kelleher* v. *School Board*, 134 Mo. 296; *Yeargin* v. *Maschke*, 90 Wash. 249; *California Pine Box Co.* v. *Superior Court*, 13 Cal. App. 65.

Relator was entitled to a subpoena *duces tecum* requiring the production of the documentary evidence underlying the tentative valuation and, for the purpose of cross examination, the attendance of the employees of the Bureau of Valuation who gathered, compiled and analyzed such evidence. *Omaha* v. *Omaha Water Co.*, 218 U. S. 180, distinguished.

The valuation proceeding is a quasi judicial one, and therefore, in accordance with the principles laid down in *Interstate Commerce Comm.* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, relator, as a party litigant, was entitled to be apprised as to all evidence considered. The Interstate Commerce Act expressly provides (§ 17) that "proceedings before it [the Commission] . . . shall conform as nearly as may be to those in use in courts of the United States." Congress intended the Commission to administer § 19a of the act in precisely the same manner that it had administered others—by giving all parties, including its own employees, an opportunity to introduce evidence, and then deciding the issues upon the evidence thus introduced.

Any judgment reached by a court with respect to the value of a carrier's property in a case involving the Act to Regulate Commerce must be entirely based upon the very evidence which the Commission considered in making the finding. How could the court make such a finding if there were no record of a substantial part of the evidence considered by the Commission, or, especially, if the Commission made its tentative finding without evidence? This paragraph (j) of the act of necessity restricts the Commission to a proceeding which determines

value upon evidence which a court can consider, when under the act it becomes necessary for a court to pass upon that question.

That Congress intended that the valuation proceeding should be of a judicial nature is shown by the effect which it gives to the order of the Commission made as a result of the proceeding, not only in making such order *prima facie* evidence of the valuation of relator's property in all proceedings (including judicial proceedings), but in authorizing the Commission to use the valuation and the data supporting it for determining (1) reasonable charges under paragraph 5, § 1; (2) amount of sale price and security issues upon the purchase by one carrier of the property of another under paragraph 6b, § 5; (3) reasonableness of aggregate level of rates of the country as a whole, paragraphs 2 and 4, § 15a; (4) amount of excess earnings to be recaptured from carriers under paragraph 6, § 15a; (5) amount and conditions of security issues by carriers under § 20a of the act.

A proceeding where one's property rights may be taken through administrative action without anything more than a mock hearing in which he is neither apprised of the evidence considered nor given opportunity to introduce relevant evidence, would constitute a failure of due process under the Fifth Amendment. *Bratton* v. *Chandler*, 260 U. S. 110.

Paragraph (i) gives the carrier the right to a hearing, including the right to introduce evidence. Of what value is this right if the carrier be denied the right not only to show that evidence upon which the tentative valuation is based is false, but even to know what that evidence is?

No claim is made by the carrier to a right to a hearing prior to the time the tentative valuation is announced. Nor is such a hearing essential to the protection of its rights.

The provisions of the Act to Regulate Commerce which relate to rate hearings are almost identical in terms with

those in § 19a. In both the governing words are "investigate" and "hearing." Some years ago the Commission took the position that it could base its findings in rate cases upon evidence not received at the hearing, and which was undisclosed to the carrier. But this Court in *Interstate Commerce Comm.* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, overruled the contention.

This evidence constitutes an integral part of a "proceeding" under the Interstate Commerce Act. *Deere Plow Co.* v. *Jones*, 68 Kans. 650; *American Shipbuilding Co.* v. *Whitney*, 190 Fed. 109. And such proceedings under the express terms of paragraph (1) of § 17 "shall be public at the request of any party interested."

The excuse that these data are private and confidential information either of third persons, the Government or of the Commission or its employees, ought to have no standing whatever in a court of justice. *Boston & Maine R. R.* v. *State*, 75 N. H. 513; *Wertheim* v. *Continental Ry. Co.*, 21 Blatchf. 246.

No officer of the Government, as such, has any privilege as a witness. *Gugy* v. *Maguire*, 13 Sou. Can. 33; *Hartranft's Appeal*, 83 Pa. St. 433; Wigmore, Evidence, par. 2375; II Robertson's "Trials of Burr," pp. 517–519; I *id.*, p. 182.

The Commission had no discretion to refuse to issue a subpoena, under § 12 of the Act to Regulate Commerce.

If the relator is entitled to have the records produced its right to have a subpoena therefor should not be denied upon the assumption that the Commission will require its employees to be present at the hearing.

The data were sufficiently described.

Mandamus is the proper remedy to compel the issuance of the subpoena. The duty is ministerial. *Ex parte Peterson*, 253 U. S. 300; *San Francisco Gas Co.* v. *Superior Court*, 155 Cal. 30.

The Supreme Court of the District of Columbia had jurisdiction.

This is not a suit to set aside or annul an order of the Interstate Commerce Commission. *Ex parte Uppercu,* 239 U. S. 435.

The order in question is an ex parte administrative one which does not relate to anyone except the Commission. Neither the relator nor any other person, outside of the Commission's own employees, is required "to do or abstain from doing any act." The order, therefore, is not reviewable in a direct proceeding to annul or set it aside. *United States* v. *Illinois Central R. R. Co.,* 244 U. S. 82; *Procter & Gamble Co.* v. *United States,* 225 U. S. 282.

The jurisdiction which the Commerce Court obtained was only "that now possessed by the Circuit Courts of the United States." Jud. Code, § 207; *Procter & Gamble Co.* v. *United States, supra.* Therefore, unless the words "Circuit Courts" include the Supreme Court of the District of Columbia, the jurisdiction of the latter court which undoubtedly existed prior to the establishment of the Commerce Court was not vested in the Commerce Court, but has continued in the Supreme Court of the District. If the words "Circuit Courts of the United States" are to be construed as vesting the jurisdiction of the Supreme Court of the District in the Commerce Court, then, in the similar provision of the Urgent Deficiency Appropriations Act, "District Courts" is sufficiently broad to include the Supreme Court of the District of Columbia when that jurisdiction is reinvested.

In several mandamus cases, each embracing orders of the Commission, jurisdiction arising subsequent to the enactment of the Urgent Deficiency Appropriations Act has been upheld by this Court. *Interstate Commerce Comm.* v. *Humboldt S. S. Co.,* 224 U. S. 474; *Kansas City Southern Ry. Co.* v. *Interstate Commerce Comm.,* 252 U. S. 178; *Louisville Cement Co.* v. *Interstate Commerce Comm.,* 246 U. S. 638.

Mr. P. J. Farrell for defendants in error.

The District Courts of the United States have exclusive original jurisdiction of the subject matter, under the Commerce Court Act and the Act of October 22, 1913, 38 Stat. 219. The real purpose is to annul the Commission's order of October 9, [the substance of which is given in the Court's opinion, *infra*, 75,] made under the Interstate Commerce Act, particularly § 19a, par. (e).

The petition does not allege facts showing illegal acts or breach of legal duty by the defendants in error, or any of them.

The petition does not show that the Commission has refused to issue subpoenas requiring the other defendants to appear at a hearing before the Commission and testify concerning the valuation of the property referred to in the petition.

Congress intended to leave the Commission free to exercise its own discretion as to the issuance of subpœnas; and it would not be proper for the Court, by mandamus, to interfere. *Interstate Commerce Comm.* v. *Waste Merchants Assn.*, 260 U. S. 32.

No particular record or datum is mentioned, or designated.

Plaintiff's motion to the Commission was an attempt to secure a search warrant to enter upon a fishing expedition in the Commission's Bureau of Valuation for the purpose of ascertaining whether there is anything in the working papers of the Commission's employees which, in the opinion of plaintiff, can profitably be used by it in any hearing before the Commission which may hereafter be held upon its protest. Representatives of the plaintiff and employees of the Commission could not at the same time use the records and data mentioned, and this, we submit, clearly demonstrates the correctness of reasons for denying the motion set forth in the Commission's order of October 9. See *Jenkins* v. *Bennett*, 40 S. Car. 393.

The theory of the plaintiff appears to be that the Commission cannot perform properly the appraisal duties under § 19a unless, upon demand, it exhibits to plaintiff for criticism all information the Commission may obtain concerning costs and values in the investigation. This ignores the difference between the duties of the Commissioners as appraisers under said § 19a, and the duties they perform in determining disputed questions of fact in rate and similar cases. *Omaha* v. *Omaha Water Co.*, 218 U. S. 180.

If the Commission, in fixing final values, commits errors of law, they can be corrected in suits instituted in District Courts of the United States; but they cannot be corrected, either before or after the final values are so fixed, in mandamus proceedings.

If, after plaintiff has introduced evidence in support of its protest, in a hearing before the Commission, evidence of a contrary import is introduced at the hearing, plaintiff will then have a right to test the accuracy, competency and relevancy of the latter evidence, but, in advance of the introduction by it of its own evidence, it may not properly insist upon being given an opportunity to examine all matters in the Commission's Bureau of Valuation for the purpose of ascertaining whether, in its opinion, such evidence of contrary import is therein contained. And what is said here about the introduction of evidence before the Commission will be equally applicable to the introduction of evidence in court, if plaintiff challenges in court the validity of action the Commission may finally take in determining the value of the property.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This proceeding arises under what is now § 19a of the Interstate Commerce Act. Act of February 4, 1887, c. 104, 24 Stat. 379, as amended by Act of March 1, 1913, c. 92, 37 Stat. 701, and Act of February 28, 1920, c. 91,

§ 433, 41 Stat. 456, 474, 493. Obeying this section the Interstate Commerce Commission made a tentative valuation of the relator's property and served it upon the relator, the St. Louis Southwestern Railway Company, in July, 1921. In due time the relator filed its protest against the valuation, as provided by the act, especially against the findings of the final value of the property, the cost of reproduction new, the cost of reproduction less depreciation, present value of relator's lands, and the present cost of condemnation and damages or of purchase of lands in excess of present value. In July, 1922, the Commission, as required, made an order setting the matter down for hearing in Washington on September 26, 1922. On July 20 the relator filed a motion with the Commission praying for an order allowing it to examine the underlying data upon which the valuation was based, and for a *subpœna duces tecum* to named officers of the Commission directing them to bring with them to the hearing all the data in any way relating to the matter in issue. In August the Commission canceled the hearing and in October made an order to the following effect. It recited that the opening of certain records to inspection before they were offered in evidence before the Commission in hearings upon protests or before a Court of competent jurisdiction, would be detrimental to the public interest; would make it impossible to secure as uninfluenced opinions upon land values and price and cost information as the Commission could otherwise; would unnecessarily prolong the work, and greatly increase the expense; and would seriously interfere with due performance of the regular duties of the Commission's employees. It therefore ordered that, until further order, office or field notations, &c., in the Bureau of Valuation; opinions and correspondence from or to any employee thereof; land field notes; land computation sheets; cost information secured from others than the carrier in question; cost studies and

cost analyses prepared by the Bureau of Valuation, should not be open to inspection by other than the employees of the Commission unless and until offered in evidence at hearings or before a Court as above.

Thereupon the relator filed the present petition for mandamus in the Supreme Court of the District of Columbia. It sets forth the foregoing facts in detail and annexes a copy of the valuation, with the Commission's statement of the kinds of proof and methods used in making its findings, and further statement that those findings were based upon certain underlying facts compiled by the employees of the Bureau of Valuation, these underlying facts being indicated at some length. They embraced contracts for materials made over the whole country for the ten years ending June 30, 1914; contracts for constructing railroads or parts during the same time; actual expenditures for various classes of construction work in unidentified projects selected by the Bureau; books, vouchers and invoices of materials, &c., used in construction during the same time; undisclosed records purporting to show the service life of various classes of material, &c., together with an inspection report by the Bureau's engineers showing the age of the materials, &c., in relator's railroad. From such data, classified and selected, compilations and analyses were made purporting to show average cost of materials, &c., &c., and the average ratios of engineering and general expenses during construction and interest during construction to cost of construction in selected projects, and the average service, life, age, &c., of the various units of property in relator's railroad. These compilations were used as the basis for finding cost of reproduction new and cost of reproduction less depreciation in the relator's case. Similarly the present value of relator's lands is said to have been reached upon uncommunicated data which it is not necessary to repeat, and the present cost of condemnation or damage or of

purchase in excess of the present value of relator's land is said to have been reached in the same general way. The foregoing data are alleged to have been reduced to writing and to be within the control of the Commission. It is alleged that much of the information gathered was not under oath and that many statements were made orally and that many opinions were taken from persons not qualified to express the same.

The relators prayed for an order directing the Commission to allow it to examine these underlying data, contracts, reports, compilations and records of the Bureau of Valuation so far as in any way related to valuation of the relator's property, and to make written and photographic copies of the same. It also asked that the Commission be directed to issue subpœnas to named officers as in the motion made to the Commission stated above. On a motion to that effect the petition was dismissed by the Supreme Court and the judgment was affirmed by the Court of Appeals. We are of opinion that the judgment was right, and will indicate not only the grounds of our decision but what we think that the relator reasonably may demand.

The relator's claim of right has for its broadest basis the fact that the valuation when made final by the Commission will be *prima facie* evidence in various judicial proceedings in which the value of the property is material to the decision of the case. But the legislature may make one fact *prima facie* evidence of another if the inference is not "so unreasonable as to be a purely arbitrary mandate." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 82. If Congress had given no hearing before the Commission but still had made its conclusion *prima facie* evidence of value, it would be hard to say that any constitutional rights of the railroads had been infringed. *Reitler* v. *Harris*, 223 U. S. 437; *Meeker* v. *Lehigh Valley R. R. Co.*, 236 U. S. 412, 430. The strongest basis for the relator's claim is the statute itself.

The statue provides that "Unless otherwise ordered by the commission, with the reasons therefor, the records and data of the commission shall be open to the inspection and examination of the public." The Commission has ordered otherwise as we have stated and the order puts an end to the claim to examine the data on the naked ground that they are public documents. But as the statute provides for a hearing before the Commission it does not follow necessarily that the parties to the proceeding are subject to the same rule when the data are desired as evidence. The hearing to be sure is not of the ordinary kind. The railroads have no adversary. The Commission of course has no object except to arrive at the truth. It is not to be cross examined for bias or otherwise as to its capacity to decide or modes of deciding what is entrusted to it, but on the other hand, since it must grant a hearing, manifest justice requires that the railroads should know the facts that the Commission supposes to be established, and we presume that it would desire the grounds of its tentative valuation to be subjected to searching tests. But there are necessary limits. While there can be no public policy or relation of confidence that should prevail against the paramount claim of the roads, the work of the Commission must go on, and cannot be stopped as it would be if many of the railroads concerned undertook an examination of all its papers to see what they could find out. We need not now consider whether the statute authorizes the order if it be construed to apply to cases like the present, for we cannot doubt that this Commission will do all in its power to help the relator to whatever it justly may demand. As yet it has made no just demand, for we accept the Commission's statement that a general examination in the Commission's offices would interfere too much with its work. Moreover, at the hearing there will be limits, at the discretion of the Commission, to the right to delay the sittings by minute in-

quiries that might protract them indefinitely. See *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, 175. But subject to that discretion, we think that, in such way as may be found practicable, the relator should be enabled to examine and meet the preliminary data upon which the conclusions are founded and to that end should be given further information in advance of the hearing, sufficient to enable it to point out errors, if any there be. No present need is shown for the issue of subpœnas; and with this intimation of our views of the Railroad's rights we repeat our opinion that the judgment should be affirmed.

Judgment affirmed.

MR. JUSTICE BUTLER took no part in the decision of this case.

RAILROAD COMMISSION OF TEXAS ET AL.